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BARGAINING
WITH
ORGANIZED LABOR

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BARGAINING

WITH

ORGANIZED

LABOR

By

R. C. SMYTH

and

M. J. MURPHY



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to

A. L. S.

and

D. G. M.

PREFACE

IN COMPILING material for this book hundreds of sources were utilized. Although it is impracticable to mention each by name, still special thanks are due the American Management Association, the National Industrial Conference Board, the Twentieth Century Fund and the *Personnel Journal*. In addition, the encouragement and helpful criticism of friends and associates, such as Guy B. Arthur, Jr., E. H. van Delden, A. A. Desser, Edward N. Hay, M. A. Heidt and Moses Shapiro are gratefully acknowledged.

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Needless to say, the viewpoints expressed herein are solely those of the authors and do not necessarily represent the policies or procedures of their respective companies.

Richard C. Smyth
Matthew J. Murphy

March 24, 1948

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BARGAINING
WITH
ORGANIZED LABOR

INTRODUCTION

THE successful negotiation of a collective bargaining agreement is an important and difficult process. It is important because it affects the welfare of those directly involved and because it is a highly significant part of our economic way of life. It is difficult because it is an art rather than a science and because it is concerned throughout with that most complex subject—human nature.

It is also difficult because the parties to collective bargaining must know not only *how* but also *what* to negotiate. The latter requirement means that at the very beginning of negotiations they should have well-crystallized ideas about their philosophies of doing business under a system of collective bargaining and about the principal subjects of bargaining, such as wages and hours, union and management security, grievance procedures, arbitration, and seniority.

In essence, this means that when negotiators start to bargain,

they should know not only *where* they want to end up but also *why*. If collective bargaining is ever to be more than a mere opportunistic groping for advantage, it is essential that those who engage in it have some integrated working philosophy by which to be guided. In this respect, whether or not they agree with the philosophies that have developed, most employers must recognize that organized labor has outstripped management. Thus, where many employers are still genuinely lacking in basic collective-bargaining concepts and philosophies, unions have carefully defined their aims and objectives.

What has just been said explains in part why this book has been written. One of its objectives is to present to the reader an integrated management philosophy of bargaining with organized labor on a businesslike basis. The essence of this philosophy is that the same general considerations of good business sense that apply to the negotiation of any legally binding commercial contract should be applied in the case of a labor contract. This means that a labor agreement should be as clear and concise as possible—that both parties be fully prepared to live up to their commitments—and that, having made such an agreement, management should then be willing to live under the contract in a human and largely non-legalistic fashion.

A second and closely related objective, as has already been suggested, is to provide the reader with basic information concerning bargaining techniques and subject matters that will be of practical value. In seeking to accomplish this objective, a good deal of “how to do it” material has necessarily been introduced. This type of approach, however, can easily become sterile if overdone. Recognizing this, the authors have consistently striven to present and explain related background information and general principles at appropriate points. Discussion of the reasons underlying various ideas and courses of action is, it is felt, the best way of helping the inexperienced negotiator. He is then better prepared to stand on his own feet in his bargaining relationships and to think his way more discriminatingly through his problems. Labor unions have long since learned their lesson in this respect. Realizing that no one

can negotiate in a vacuum, they regularly exert every effort to see that their representatives are thoroughly prepared to bargain. To be effective, management must do likewise.

The final objective of this book is to draw a picture of the negotiator's personal contribution to some of the practical requirements of collective bargaining. This is discussed in detail as part of one chapter, but, more importantly, it is also woven into many phases of the discussion. Thereby is revealed more intimately, from management's standpoint, the basic significance of certain key points. Thus, it cannot be emphasized too much that a good negotiator must be able to project himself into the position of "the other fellow." He must be closely in touch with the grassroots—must be able to visualize the impact of the clauses he negotiates on those who must live under them from day to day. Certainly, too, he must understand and use the fundamental principles of business management and economics. If he does not, he runs the constant risk that he will bankrupt his organization either directly through ruinous financial outlays or indirectly by robbing management of the right to manage. Woe to the negotiator who lives with his head in the clouds!

The Labor-Management Relations Act, 1947, has been part of our labor relations scene for just about a year as this introduction is written. In many respects it is still an unknown quantity, but in many others its import has already been well clarified, principally through experience with the National Labor Relations Act and through uncontested acceptance in practice of certain provisions of the new law. Throughout the text numerous references are made to the Act, and recognition is given to the distinction set forth above so as to present realistically the present picture of partially unsettled thought concerning this relatively new arrival in the field of collective bargaining.

To the sophisticated reader, it will soon become apparent that this text is not an original contribution, nor is it so conceived by the authors. In one form or another, in one place or another, most of the ideas and concepts that are developed on

the following pages will be found to have been worked out by others. The difficulty from the average reader's standpoint (both businessman and student) is that it is a virtually impossible task to search out the information he needs when he needs it, because it is so scattered. The authors have done this searching for the reader, bringing together from several hundred different sources a wide range of facts and ideas. They have organized them into what, it is believed, will be a useful bargaining guide. Although the results of such an effort cannot be termed an original contribution, the authors are also aware that they cannot avoid full responsibility for the final result.

In the interests of easier reading, a substantial proportion of the footnotes and references contained in the original manuscript have been left out of the printed copy. Readers who desire additional information on documentation are invited to communicate with the authors or publishers, who will be glad to supply from their files the facts that are needed.

TYPES OF UNION-EMPLOYER RELATIONSHIP

IN THE manufacturing industries more than 7.9 million production workers (approximately 69 percent) were employed under union agreements in 1946. Such industries as aluminum, automobile, basic steel, brewery, fur, glass, men's clothing, and shipbuilding had over 90 percent of their production workers under union contract while, at the other end of the scale, coverage in such industries as dairy products, and cotton, silk, and rayon textiles ranged between 20 and 39 percent.¹

In the non-manufacturing industries there was a smaller percentage and a wider range of variation of coverage. About 6.9 million workers were under union agreement, amounting to about 35 percent of the total number of all non-manufacturing

¹ All data drawn from: U. S. Department of Labor, Bureau of Labor Statistics, "Extent of Collective Bargaining and Union Recognition, 1946," *Monthly Labor Review*, vol. 64, No. 5, pp. 765-766, May, 1947.

workers. The range of coverage was from better than eighty percent in the case of such industries as coal mining, maritime, longshoring, and railroads down to less than 1 percent in agri-

MANUFACTURING INDUSTRIES

80-100 percent	60-79 percent	40-59 percent	20-39 percent	1-19 percent
Agricultural equipment. Aircraft and parts. Aluminum. Automobiles and parts. Breweries. Carpets and rugs, wool. Cement. Clocks and watches. Clothing, men's. Clothing, women's. Electrical machinery. Furs and garments. Glass and glassware. Leather tanning. Meat packing. Newspaper printing and publishing. Nonferrous metals and products, except those listed. Rayon yarn. Rubber. Shipbuilding. Steel, basic. Sugar.	Book and job printing and publishing. Coal products. Canning and preserving foods. Dyeing and finishing textiles. Gloves, leather. Machinery, except agricultural equipment and electrical machinery. Millinery and hats. Paper and pulp. Petroleum refining. Railroad equipment. Steel products. Tobacco. Woolen and worsted textiles.	Baking. Chemicals, excluding rayon yarn. Flour and other grain products. Furniture. Hosiery. Jewelry and silverware. Knit goods. Leather, luggage, handbags, novelties. Lumber. Paper products. Pottery, including chinaware. Shoes, cut stock and findings. Stone and clay products, except pottery.	Beverages, non-alcoholic. Confectionery products. Cotton textiles. Dairy products. Silk and rayon textiles.	(None.)

NON-MANUFACTURING

80-100 percent	60-79 percent	40-59 percent	20-39 percent	1-19 percent
Actors and musicians. Airline pilots and mechanics. Bus and streetcar, local. Coal mining. Construction. Longshoring. Maritime. Metal mining. Motion-picture production. Railroads. Telegraph. Trucking, local and intercity.	Radio technicians. Theater-stage hands. Motion-picture operators.	Bus lines, intercity. Light and power. Newspaper offices. Telephone.	Barber shops. Building, servicing and maintenance. Cleaning and dyeing. Crude petroleum and natural gas. Fishing. Hotels and restaurants. Laundries. Nonmetallic mining and quarrying. Taxicabs.	Agriculture. ¹ Beauty shops. Clerical and professional, excluding transportation, communication, theaters and newspapers. Retail and wholesale trade.

¹ Less than 1 percent.

FIGURE 1. PROPORTION OF WAGE EARNERS UNDER UNION AGREEMENT AT END OF 1946.

culture. Figure 1 gives a more detailed picture of the extent to which all major industries have been unionized. Statistics such as these reveal the power of unions in no uncertain terms. They represent, too, the end result of an enormous expansion which

makes the formerly condescending and patronizing comment that "organized labor is here to stay" sound both naive and unnecessary.

However, organized labor is not now so powerful that it occupies the driver's seat, with American management sitting behind as a mute and docile passenger. Such inferences have, in fact, been made but they serve largely to illustrate the danger of applying loose generalizations to complex and dynamic problems. The extent to which a sound collective-bargaining relationship may be produced in any given case depends upon a variety of factors. Of course the basic concepts and operating policies of national leaders of labor and management play an important part, for they generally lay down the broad patterns of concurrence and disagreement between the parties in certain areas of bargaining. However, in addition, the local conditions and circumstances of the individual case are often equally or more important. Local personalities on both sides, the union's strength in the particular plant, the relation of the local management's policies to those of other firms in the area (especially if the same union is involved), the past history of labor relations within the firm—all these are typical of the factors that can, and do, affect the course and outcome of collective bargaining.

In this light, the question of who is in the driver's seat no longer becomes one of extensive generalization about *all* of labor or *all* of management. It becomes rather that of analyzing the possibilities in view of what may develop in any individual case, where various combinations of legal, economic, and psychological factors may affect the balance of power. Boiled down to simplest terms there are really only three possibilities:

1. Management is the more powerful
2. Labor is the more powerful
3. Both parties are sufficiently strong for neither to be able to dominate consistently.

In terms of current legal definitions each of these conditions may quite legitimately be characterized as collective bargain-

ing. However there are significant differences between them which have important practical consequences. In fact the differences in actual practice are such that there is a substantial basis for the conclusion that where either management or labor is so clearly dominant that the one can regularly dictate to the other on a strictly "take it and like it" basis there is little or no chance for the processes of true collective bargaining to work. This is so even though technically and legally all the criteria of bargaining are met.

MANAGEMENT-CONTROLLED COLLECTIVE BARGAINING

The company union is the classic example of so-called collective bargaining in which the balance of power is largely on the side of management.² This device characteristically has tended to preserve an unequal distribution of power sufficient to prevent true bargaining from taking place, in spite of the fact that the employees may at times actually receive substantial benefits as the result of the existence of the relationship. In other words, by granting some benefits, particularly with respect to wages, management is enabled in many ways to take what is, in effect, unilateral action, by securing the rubber-stamp approval of the dominated employee organization. Usually appearances will be kept up and discretion exercised in action so as not to arouse the rank-and-file employees unduly, lest they become actively interested in some other union. This type of situation is becoming increasingly rare, although some dominated unions undoubtedly still exist.

Probably more to the point at the present time is the type of relationship in which management is able to dominate primarily because the employee organization is basically weak—i.e., has few members, little money or no powerful international union to back it up. Although it cannot be considered a dominated

² Company union is customarily used to denote a union which exists in one plant or one concern, and which either is dominated or was instigated by the employer.

(or company) union, it may nevertheless be in such a poor strategic position that a strike would merely destroy it as an organization. If this is known to the management, it is possible that extensive concessions may be forced from the union in contract negotiations and even that the employees may be worse off after having secured representation than they were in their unorganized state. Naturally extreme cases are very rare, but the situation in which a management is just certain enough of the union's weakness to hold back on issues a stronger union could readily force through is not rare. This is a particularly difficult problem for some of the genuinely independent unions that have no parent organizations to help them, or for international or national unions with small bargaining units of semi-skilled employees, in large plants.

LABOR-DOMINATED COLLECTIVE BARGAINING

Collective bargaining dominated by a labor organization would, not too many years ago, have been regarded by most of management and labor as impossible. Certainly the balance of power had been traditionally on the employer's side and was generally brought to something more nearly approaching equality only after a union had emerged the victor in bitter economic warfare. If a labor organization should happen to lose out in its efforts to reduce the differential in power, by a strike, its very existence was almost certain to be forfeit. In the famous Homestead strike of 1892, for example, the Amalgamated Association of Iron, Steel and Tin Workers was unsuccessful in its battle to force Carnegie Brothers and Company (later the Carnegie Steel Company) to continue contractual relations with it.

This is by no means an isolated instance, nor is it restricted to the immediately succeeding era of the early 1900's. After labor had made substantial gains during the first World War and up to 1920, the same pattern was again unfolded during the succeeding decade in some of the industries in which unions had been very successful before and during the war. As an

example, Millis and Montgomery point out that such groups as the seamen, the packing-house employees, and members of the unions grouped together in the Railway Employees' Department of the AFL suffered either the loss of the preferential or closed shop, or else found union control distinctly weakened. The Machinists' Union, which had succeeded in organizing the employees of numerous machine shops during the years immediately before 1920, were defeated in a number of important strikes and saw the open shop set up in these machine shops, as well as in the railway shops where its members had found employment. In the textile industry wages were lowered and the already relatively ineffective union position was still further undermined.

It was not until 1932 (Norris-La Guardia Anti-Injunction Act) and 1933 (National Industrial Recovery Act) that the pendulum began to swing in favor of organized labor. The temporary set-back caused by the Supreme Court's finding that the NIRA codes were unconstitutional was quickly erased by passage of the National Labor Relations Act in 1935. Since then the tide of unionization has risen.

There are some who have viewed the rapid growth of organized labor in the past decade with mounting alarm. This alarm was caused by the conviction that labor and management had too completely reversed their roles—in other words, that the unions were so much more powerful than the employers that a definite halting or reversal of the trend was essential. Speaking before the passage of the Labor-Management Relations Act of 1947, one commentator stated:

Trade unions have developed into one of our few remaining unregulated monopolies . . . That all of this vast new economic power is going to be wielded generously and always in the public interest is simply too much to expect of human nature. Forty years ago the unions did not have the power to wreak great injury upon the body politic. Today they have.³

³ Robert Littler, "Program for Picketing," *Fourth Annual Stanford Industrial Relations Conference*, Stanford University, Calif., p. 15, March 24-28, 1941.

The following observation, in a similar vein, is the more impressive because it comes from an individual once high in the councils of the New Deal:

For many years labor leaders sought to restrain the autocratic powers of management by creating a counteracting or balancing power in labor unions. The main effort was to build up the economic strength of organized men to equal the economic strength of organized money. In this struggle, government for a long time gave potent aid to management, because of the public duty to preserve law and order and to protect property rights.

Then organized labor began to mobilize its political power—the voting strength of the masses. Government became the ally of the workers and an active force to restrict and weaken the economic power of management. Right here began a major blunder in public policy. The creation or the grant of power without corresponding responsibility is an economic or political sin. Any sound plan for economic or political progress must avoid this evil.

A glaring weakness in our capitalist economy had been the irresponsible power of organized money. As the minor power of a millionaire had grown into the major power of a billion dollar corporation, there had been no corresponding increase of social obligations. Yet self-preservation did impose upon this money power a strong interest in order and discipline and a moderate, even though a secondary, interest in the general welfare.

But, when government lent its great aid to increasing the economic strength of the workers, it tolerated and actually encouraged a private interest in disorder and disregard for the general welfare. It created and sustained a legalized right in the workers to disorganize production and distribution as the way to self-advancement. Management was not merely forbidden to interfere with labor organization, but was made legally helpless to boss the job and to insure the fulfilment of the public duties of private enterprise.⁴

Those replying to such allegations normally have long memories—memories stretching back to earlier days when the em-

⁴ Donald R. Richberg, "Democracy's Terrible Blunder," *American Affairs*, vol. 7, No. 2, pp. 80-81, April, 1945.

ployer largely did as he pleased, even under collective bargaining. Their answers, strongly colored by past experiences with powerful and effective anti-labor activities on management's part, are naturally heated and uncompromising. Speaking several years ago of proposals to modify provisions of the National Labor Relations Act, one labor leader stated: "The real source of this anti-labor offensive lies much further back than 1940 or even 1939. It lies in a long-range plan to destroy labor's organized strength in order to guarantee monopoly profits to the employers, profits that can only be secured at the expense of labor, the farmers, and the common people generally. The destruction of labor's rights and labor's gains is absolutely necessary to carrying out this long range plan, because organized labor is today the only force standing in the way of its realization."⁵

Such militant and emotional determination to preserve all of labor's gains and to permit no slightest suggestion of encroachment to go unchallenged is a heritage of labor's widespread suspicions of management's motives.

What about these charges and countercharges? Is it true that labor has been too powerful and too unmindful of the welfare of industry and the public? Is management just waiting for the chance to pounce upon and destroy the forces of organized labor? Freightened as these questions are with dangerous generality, emotion, and prejudice, it is obviously difficult to come up with an answer that satisfactorily takes into account all the complex variables. Certainly it is true that some, but by no means all, managements have shown evidences of yearning for lost dominance and appear to be waiting anxiously for the opportunity to retaliate. Likewise some union leaders, but again by no means all, have committed excesses as the result of their new-found power. In both instances the extremists have attracted attention and given cause for alarm whereas the moderates have, as usual, simply gone on their way unnoticed.

There is no doubt that the average small employer can no

⁵ Lee Pressman, Address before National Lawyers Guild Convention, May 31, 1941.

longer cope with a large and powerful international union when the union decides to put its demands on a "take it or else" basis. The inequality of bargaining power is so great that in many instances, in order to preserve their independence, small employers have been forced to band together into what are, to all intents and purposes, employers' unions (which is the term prevalent in Great Britain). The small contractor in the building trades, as an example, often will have no opportunity to practice collective bargaining unless affiliated with an employers' association powerful enough to bargain on his behalf. Acting on his own in an area where the crafts are well organized, the contractor must simply accept the established scale and hire only union help or else do no business. This is also true of many service industries that have been well unionized. The Musicians' Union under James C. Petrillo has achieved much publicity for its ability to dictate terms to the firms with which the union does business. This also applies in the case of the powerful Teamsters' Union.

Although the smaller firm is obviously likely to be vulnerable in its dealings with large and powerful international unions, big business is not always immune from successful attack. This is so because size of organization, though important, is by no means the only factor affecting the balance of power in collective bargaining. Recognition must also be given to the possible effects of a variety of other considerations, such as general business conditions, the leadership of the bargaining parties, the type and degree of employee organization, the attitude of the public and of government agencies towards unionism, and the economic conditions prevailing in the industry. The effects of these factors are vividly revealed in the case of the anthracite coal industry where, in approximately twenty-five years (circa 1900-1925), the roles of management and labor were reversed, with the balance of power ending up clearly on the side of the unions. How dangerous either extreme of unequal distribution of bargaining power can be is shown in the following conclusions concerning this industry: "Experience in anthracite shows

that a preponderance of bargaining power on either side *does not make for satisfactory industrial relations*. Under these conditions the party in power tends to forget that rights also carry responsibilities. As a result it is prone to disregard legitimate interests of the other side and not infrequently of the public. Both operators and unions have abused their power.”⁶

Although addressed to one industry and (largely) one union, these comments are equally applicable to most industries and most unions.

However the labor legislation pendulum has swung again. Largely as the result of the general public's disgust with the post-war antics of some labor leaders, the Congress on June 23, 1947, passed the Labor-Management Relations Act over the President's veto, in an effort to curb some of organized labor's excesses.

COLLECTIVE BARGAINING ON A BASIS OF RELATIVE EQUALITY

The British have long been exponents of the thesis that the healthiest and most fruitful collective bargaining relationship is one in which both parties are strong, vigorous, and well led. As a consequence British labor and management have shown a much greater tendency to consolidate and centralize their strength than have their counterparts in the United States. The following statement conveys some of the reasons that have been given for this well defined tendency: “Repeatedly employers and representatives of employers’ organizations stated . . . that they preferred strong unions to weak ones, because the strong union is better able to . . . bring competitors up to the wage and hour standards of the industry, as set by the agreements. Repeatedly labor representatives stated . . . that they preferred strong employer organizations to weak ones, because

⁶ *How Collective Bargaining Works*, p. 317, Twentieth Century Fund, New York, 1942.

the stronger the organization the fewer the units which remain outside to undermine industry standards.”⁷ Such observations indicate, in part, the impact of economic factors peculiar to the British Isles. However, they also reflect to a substantial degree the influence of basic concepts of living under a system of collective bargaining that are quite different from those usual in the United States.

The comments quoted concerning the importance of strength and vigor on both sides do not, of course, mean that labor and management in the United States are unmindful of this consideration. Indeed, one of the most cogent expressions of the principle of equality comes from a spokesman for an American management: “. . . the best and most successful relationship can exist only where there is on the one hand a strong, aggressive, and efficient management, which has power and discipline to enforce its just needs, and, on the other hand, a strong, well-knit, well-organized union.”⁸

Although the merit of such statements cannot be gainsaid, it still must not be forgotten that mere equality of strength does not guarantee that good labor relations will be forthcoming. In actual practice there is a wide range of variation in the way in which strong unions and strong managements adjust to one another. As is usual, the most extreme cases are relatively easy to identify. At one end of the scale is what may be termed the armed truce, with scarcely concealed antagonisms readily discernible. At the other extreme is the partnership, in which it is hard to tell where the union's share in running the business ends and management's begins. In between these two there are innumerable practices that defy precise classification but that scale off on each side from a central point that may be characterized as a businesslike relationship.

⁷ U. S. Department of Labor, *Report of the Commission on Industrial Relations in Great Britain*, pp. 21-22, U. S. Government Printing Office, Washington, D. C., 1938.

⁸ Morris Greenberg, “Working with Sidney Hillman's Union,” *Personnel Journal*, vol. 17, No. 6, p. 200, December, 1938.

COLLECTIVE BARGAINING ON AN
ARMED-TRUCE BASIS

"A negative attitude developed by viewing collective bargaining as a series of retreats, forced concessions, and mere compromises cannot result in a dynamic or positive industrial relations program. Sometimes management policy is even more unconstructive, with each concession made in an agreement by the employer considered as a temporary loss to be retrieved in counterattack through day-to-day application. How can collective bargaining possibly become a constructive force with such tactics?"⁹

This statement not only expresses the basic viewpoint that underlies an armed-truce approach to bargaining, but also conveys the disapproval that it generally deserves. It may be noted, too, that the emphasis is placed upon the key importance of attitudes. Where these are notably bad on either side, the foundation for labor strife can be said to be already laid. Suspicion, feelings of insecurity, personal dislikes, opposition on vague "principle"—all these attitudes are symptoms of danger. Unfortunately when such conditions exist, even the simplest day-to-day problems become bones of contention, accompanied by bickering and mutual denunciation.

The parties to an armed-truce relationship usually continue to do business with one another after a fashion for the very obvious reason that both sides are strong enough so that the harm that each can cause to the other usually, though not always, outweighs the advantages that might result from trying to adopt a strictly "take it or leave it" position. In effect, though mutual distrust and dislike characterize the relationship, the management cannot push out the union and the union cannot change or take over the management. The net result is that the legal criteria of bargaining are met in the barest sense of the word, but of the substance of true collective bargaining on the basis of sincerity and mutual confidence, there is no semblance.

⁹ George W. Taylor, *The Function of Collective Bargaining*, American Management Association Personnel Series, No. 81, p. 6, New York, 1944.

COLLECTIVE BARGAINING ON A PARTNERSHIP BASIS

In marked contrast to the foregoing relationship is the condition in which labor actually participates as a partner, very definitely taking an active role in the conduct of the business, and, like a true partner, exercising important managerial prerogatives. Probably the best example of this relationship in the United States is the case of the Amalgamated Clothing Workers of America. This union, with over thirty years of bargaining history in the men's clothing industry, has successfully salvaged some firms from bankruptcy through the help of its bankers and production and technical experts, has reorganized other firms, has actively cooperated in the discovery of supervisory personnel, and in numerous cases has re-worked production processes for, or jointly with, managements to cut costs or improve the product or both. Even more far-reaching was the union's famous Stabilization Plan of 1939 which encompassed for almost the entire industry the complex task of standardizing and controlling the major elements of production, labor cost, contractors' prices, wage rates, and employment. In such activities the employers and union representatives cooperate fully, working together practically as equals.

It is important to note that in this case the current labor-relations pattern did not develop overnight. What has developed is the outcome in part of economic problems peculiar to the industry and, in part, of changed attitudes on both sides. However, even with its partnership status the union does not manufacture or distribute the industry's product—this is still the job of management. In spite of this fact the union's influence is powerful and ever-present. With its significant role in management, it is the balance-wheel of the industry.

What are the lessons to be learned from this example? Are we to assume that bargaining on the basis of relative equality can be truly effective only when management and labor have virtually equal shares in the responsibility for running the business? Probably the very fact that the example cited is admittedly atypical is the best answer to this question. Successful, sincere,

and cooperative labor relations can and do exist in which labor is not in any sense of the word a partner.

COLLECTIVE BARGAINING ON A BUSINESSLIKE BASIS

The basic point in the businesslike type of collective-bargaining relationship, where management and union are reasonably well-matched, is the fact that both parties accept what law or custom defines as the communality of interest between them. It is with respect to this common or mutual interest that the relationship potentially exists, but it is only when defined in a negotiated collective bargaining agreement that it becomes actually meaningful. Management characteristically is interested in keeping the range of the relationship as well delineated and controlled as possible. On the other hand, organized labor is equally interested in achieving more complete participation in activities commonly held by employers to be their sole prerogatives. This is particularly the case during the earlier history of bargaining or as long as a union is seriously concerned over its security.

It requires little vision to see the seeds of strife in this type of situation and it is evident that only sincerity and an honest attempt on both sides to bargain stands between a workable businesslike relationship and an angry armed truce or worse. Once again it is the attitudes of the parties that seem to play a large role in determining the outcome. However, sincerity and honesty in bargaining do not necessarily imply that the parties need be on a friendly basis, though with time friendship may develop. Nor does it mean that management need necessarily welcome the union with enthusiasm. The essential requirement implied is merely that a businesslike approach will be made by both sides to their common problems. Using a hypothetical firm as an example, one management spokesman expresses this principle as follows:

On the other hand, I can operate this business on a strictly business basis, namely, I expect a full day's work for a full day's

pay; my employees are going to be treated fairly; there will be no favoritism or apple-polishing in any part of my supervision; that I will have grievance procedure through which any employee may get fair consideration, and I can pay good wages fairly based upon the employee's demonstrated ability. I am not paternalistic. I am not giving these employees anything that they do not earn, and I do not expect them to give me anything beyond a full day's work.

I keep my plant clean, safe and well-equipped with modern machinery. In other words, I give each worker the best opportunity that my business can afford. My labor relations will be managed by a competent person whose No. 1 job is labor relations, and his standing in my top executive organization will be equal to that of the sales manager, production manager and the finance manager. . . .

After I have done that, if my employees want a union, then I shall bargain with them upon the same basis as I bargain with my suppliers of raw materials and with the customers who buy my product. I shall see that I have a fair contract—and that means that I will not accept the mimeographed copy shoved at me by the union—which definitely establishes the rights, prerogatives, and functions of management; which definitely establishes the grievances that may be brought up under the contract, and which definitely establishes the rights, prerogatives, and functions of the union in relation to the administration of this contract.

Having negotiated such a contract, I shall enforce it strictly both on management and on the union.¹⁰

Definitely there is much to be said in favor of this middle-of-the-road type of collective bargaining. By emphasizing the significance of sound and straightforward management policies it gives needed recognition to the fundamental importance of management's integrity as a first prerequisite to good labor relations. Furthermore, it highlights the fact that the process of negotiating and abiding by a labor agreement is similar in important respects to the execution of many other types of legally binding instruments. This has the salutary effect of fostering the adoption by both parties of a more objective and responsible per-

¹⁰ John L. Lovett, Michigan Manufacturers Association, in an address delivered in October, 1945.

spective toward their relationship. Most of all, it tends to clothe the process of collective bargaining with temperance and dignity, making it abundantly clear that the parties are equals—that they are granting one another no favors by doing business together.

EVOLUTION OF LABOR RELATIONS

In terms of what is ideally desirable in any given situation, the end result of the process of growth and evolution of labor relations may be stated very simply—the parties should get along together harmoniously, without need for strike or lockout. For both management and labor the relationship should be good business, worthwhile as an end in itself.

Like any dynamic process involving the conflicting personal, social, and economic desires and needs of human beings, the broad picture of labor relations that is seen and heard in press and radio is hard to reconcile with what has been roughed out above as the so-called ideal condition. The over-all picture of praise and criticism, strife and harmony, is indicative of the state of flux and change that is characteristic of any evolving process. At the same time it is also a source of much confusion to those seriously endeavoring to find the promised land which they hope lies beyond the stormy horizon. Needless to say, rare good judgment is required in order to maintain a reasonable perspective and to resist the temptation to view each new development in the evolutionary process with increasing alarm.

Today we see special interests in management, labor, and government increasingly bringing labor-relations problems into the realm of politics. Candidates are condemned and praised on their records or promises with respect to labor-relations issues. National and state lobbies are coming to be as varied and complex as those of other pressure groups. All this is not new. It is simply taking place on a larger scale. This is also true of the tactic of national demand-patterns which has become so widespread since the end of World War II. No union could afford not to participate in such "holy crusades" and almost all have gone along. Not only is this not new but it is amazingly

reminiscent of happenings in 1918 and 1919, after the end of World War I. Again we see everything occurring on a larger scale. The reason for this is not hard to discern—the labor movement is larger and better organized than ever before. It is only to be expected that the scope of its activities should expand.

With all of the political, social, and economic concepts and ideologies that seem to motivate, or at least to interest, the various pressure groups that are active, it is not surprising to find that it is extremely difficult to predict what the future holds in store for American labor relations on the political front. Certainly, when looking merely on this side of the picture, it is easy to become lost in the maze of conflicting ideologies and formulas for ideal labor relations.

It is only when attention is directed to the local scene, to a specific union and management, that the orderliness and predictability of labor relations becomes evident. Although the impact of the larger scale maneuverings of labor and management, political or otherwise, is felt on the local level, it is equally true that the problems there become less cumbersome and awe-inspiring. On the local scene are the human problems that have always existed, with the same old emotions, prejudices, motives, and needs. And, short of a revolution in our form of government, the parties still retain—and probably will continue to retain—the right to resolve their problems within a relatively wide range of latitude. The ideal of good business and good will that is so hard to reconcile with what goes on at the level of partisan politics is no longer so difficult to understand at this lower level, nor is failure to achieve the ideal so difficult to analyze.

In the following pages the emphasis will be almost entirely in the direction of the local scene. Star-gazers and left-wing political theorists to the contrary notwithstanding, our practical labor-relations problem is the same as always—local labor and local management must still live with one another and work out their daily problems. The most important step toward the effective solution of tomorrow's problems is to solve today those that we face today.

PREPARING FOR COLLECTIVE- BARGAINING NEGOTIATIONS

THE background factors that influence the labor-management relationship are numerous and varied, sometimes subtle and at other times glaringly evident, sometimes involving just one individual and at other times dozens or even hundreds of persons. Out of the interplay of these factors there grows in time a body of opinions, attitudes, or prejudices that may be termed the emotional resultant of the forces at work. Inevitably the character of this resultant is a reflection of the environment from which it grew.

BACKGROUND FACTORS

Sometimes the most important factors in the background arise directly out of the organizing campaign. All too often the results are unfortunate when the organizational drive has been long, hard, and bitter, possibly extending over months or some-

times even years. If there were contending unions, they may have tried to outdo each other with claims and promises concerning the benefits they could secure for the employees. This tendency is described by the NLRB in the following words: "Where groups are to be organized and moved into action it is not unusual for the leaders to promise more than can be secured or to indulge in some exaggeration."¹

Perhaps personalities were introduced into the campaign and members of management singled out for attack. In turn these individuals may have fought back by oral or written refutation of charges, or disciplining or otherwise penalizing employees responsible for smear tactics.

The foregoing are only a few examples of the range of possible conditions that may have helped to mold the attitudes of both labor and management. The negative side of the picture has been emphasized because the most serious problems are likely to arise there. Although it is comparatively easy for both parties to enter into collective bargaining against a background of orderliness and moderation, it is difficult for them to do so after a period of friction and discord. In this latter case, management may often be bitter or resentful and feel that it has lost the battle. In turn, at least some of the union's leaders, in the flush of victory, may adopt a cocky "now we'll show them" attitude. This attitude is likely to be a real stumbling-block where minority radical groups have come into power during the organizational drive. Such groups tend to be militant and irresponsible, apparently more anxious to create trouble than to bargain in good faith. The problem of dealing with a situation of this sort is a difficult one for management, since it is a long-term task to encourage the active interest of the more stable and conservative elements within a local union.

DEMANDS AND COUNTER-DEMANDS

Notwithstanding the contentions of some extremists, the fundamental objective of both parties in collective bargaining

¹ See: *Rabhor Company, Inc.*, 1 NLRB 470.

should be the conclusion of an agreement that is mutually fair and advantageous. The objective should *not* be to beat the opposition into the ground. If either party is forced to make concessions that are too numerous or too severe, the result will be either that the union local is seriously weakened or that management is deprived of reasonable profits or its necessary control over the business.

In this latter case, the mildest consequence to be expected is a great deal of confusion, inefficiency, and bickering. The most serious outcome is insolvency for the company and loss of their jobs for the employees. This is recognized by some of labor's leaders.

On the other hand some employers have seriously weakened the locals of some unions by forcing too many concessions during negotiations. Such tactics have often reacted to management's disadvantage by laying the foundation for bringing the minority radical group, which is almost invariably present in all organizations, to leadership and power. This radical element usually finds it easiest to gain control when the rank and file of union members are thoroughly dissatisfied with more conservative leadership.

Changes of this sort are often accompanied by substantial upheavals within the union which frequently react to management's disadvantage. Several rival groups may spring up, all seeking to wrest control,² or one or more rival unions may seize the opportunity to raid the membership, thus giving rise to innumerable problems. Strikes or slow-downs by various groups may occur. In some instances, where emotions have been sufficiently stirred up, violence and vandalism may break out.

It is true of course that, once recognition has been secured by the union, management has the legal obligation to accept it straightforwardly and to negotiate with it in good faith. In the words of the Seventh Circuit Court of Appeals:

² Under the Labor-Management Relations Act an aggressive minority group may petition the Board for a decertification election as a forerunner to gaining subsequent recognition rights.

Collective bargaining . . . requires that parties deal with each other with an open and fair mind and sincerely endeavor to overcome their difficulties to the end that employment relations may be stabilized. . . .³

However, such an obligation does not by any means imply that management must simply agree to whatever the union demands. On the contrary, the word negotiate implies give-and-take and compromise, and the management which fails to plan carefully the demands or counter-demands that it will make is in grave danger of finding itself without bargaining weapons. It requires all the skill of able negotiators to arrive at a mutually satisfactory agreement that is fair and reasonable. Neither side can afford to sit back and hope that luck or bluster will take the place of hard work and careful planning.

THE UNION'S NEGOTIATING COMMITTEE

Although all unions recognize the importance of negotiating the labor agreement, their policies and practices regarding the individuals who shall do the actual negotiating vary. In some of the craft unions the business agent alone will often handle the bargaining, while in industrial unions the most typical arrangement appears to be the utilization of a negotiating committee elected or appointed by the membership, by the departmental stewards or by the president of the local. If the union employs a business agent, he is, in most cases, a member of the committee.

If the responsibility for negotiating is assigned to a committee, it is customary to select some one person, usually the most experienced negotiator in the group, to act as the spokesman or chairman. Naturally, if a representative of the national or international union is to be present he will almost always be chosen. In practice the chairman usually carries most of the load of negotiating, particularly on the broad or fundamental

³ NLRB vs. Bass Manufacturing Company, (118 F 2d 187).

issues. He is assisted by the other members mainly in regard to local data and problems.

As a rule, such a committee neither possesses nor desires to possess the final authority to accept or reject the employer's proposals. Instead, the committee is bound to review the final offers, or the contract to which the parties have tentatively agreed, with some higher union authority. This is often the membership of the local. Obviously, however, the negotiators must be given considerable latitude. As a consequence, they can to a large degree influence the membership in the direction either of accepting or of rejecting the proposals. In most cases the committee will recommend acceptance and will try to convince the membership, or the individual authorized to pass on the proposals, that the terms are as satisfactory as could be secured under the circumstances. In some instances, however, it may be deemed advisable, for strategic purposes, to influence the membership to vote against all or parts of the negotiated or proposed agreement in order to try to wring further concessions from the employer.

MANAGEMENT'S NEGOTIATING COMMITTEE

Since unions have developed highly skilled and competent representatives to lead or to assist employee bargaining committees, management has in turn found it necessary to be more realistic in selecting its negotiators. For many years it was the common practice of employers to entrust the direct responsibility for labor negotiations to the top executive of the concern, in the case of smaller companies, or to a plant manager or general manager in larger organizations. Unfortunately, many such executives lack the time, temperament, negotiating skill, and general knowledge of labor law and industrial-relations practices to enable them to negotiate a labor agreement satisfactorily. The typical line executive is accustomed to giving orders and to making final decisions on problems raised by subordinates. Consequently, he often finds it difficult to make the psychological adjustments required in negotiating with his

employees. It is particularly difficult for such an individual to remain objective when the union committee questions or derides various policies and practices existing in the shop. This is understandable, since many of these practices and policies may have been inaugurated or approved by the executive now acting as negotiator.

It has been said that salesmen and purchasing agents make better negotiators than operating officials because their work requires patience and a certain amount of bargaining give-and-take. This, of course, does not mean that one of the company's salesmen or its purchasing agent should conduct management's negotiations with the union. Although these individuals may have the proper attitudes and the negotiating skills that are required, nevertheless their lack of knowledge of industrial relations, labor law and, possibly, of the operating problems of the organization would almost always make them unacceptable.

Most companies of any size have established industrial relations (or personnel) departments. These departments are responsible for such functions as employment, safety and health, training, job evaluation, record keeping, and such welfare activities as employee magazines or newspapers, cafeteria service, and recreational programs. Typically the department also plays the part of a coordinator, cooperating with both employees and supervisors by interpreting company labor policy, rendering advice and counsel and assisting in the adjustment of grievances.

In addition to his responsibility for these functions the individual in charge of such a department should also serve in an advisory capacity to top management on over-all labor-relations policies and personnel practices. To do so effectively it is desirable that he should be a member of top management, reporting as high in the organization's hierarchy as feasible. In the organized plant or establishment he should also be best qualified to deal directly with the union representatives and to negotiate the labor agreement for management.

However, a word of warning is necessary here. In far too many instances the personnel manager, personnel director, or

director of industrial relations is not the experienced and capable executive that he should be. Even today he is sometimes the faithful, innocuous servitor of management who was placed in the job to promote him out of the way, or the clerk to whom the duty of hiring people was assigned and about whom a department has eventually grown. Obviously it is only by sheer, and rare, good fortune that such individuals will turn out to be capable of effectively handling the important task of negotiating the labor agreement.

Clearly it is pointless to attempt any arbitrary or fixed designation of management's representatives in collective-bargaining negotiations. The choice must vary from one concern to another, depending upon the size of the company, its labor-relations history, the presence or absence of an adequate personnel organization, the availability of skilled negotiators, and the personalities of the various individuals involved. The only general rule that can safely be set forth is that the negotiator selected to represent management or the chairman of management's negotiating committee, as the case may be, should be well-informed as to federal, state and local labor legislation, should be well-versed in industrial relations as practiced throughout the industry, should be a skilled and capable negotiator, and should have a broad knowledge of management practices, such as time study and wage incentives, job evaluation and cost control. He should be fair, broad-minded and respected by his associates as well as by those employees and union representatives who have contact with him.

Management's negotiations may be conducted by one person alone, or by a committee of several executives or division heads, and, possibly, including the company's attorney, or even an outside consultant. Although operating executives on a negotiating committee get valuable training that will increase their awareness of labor-relations techniques and problems, there are also certain hazards in such a procedure.

One of the prime hazards is credulousness. This is not uncommon among those inexperienced in labor negotiations, even

when they display no such symptoms in their regular pursuits. As used here, credulousness may be characterized as an undue susceptibility to clever emotional appeals or as a tendency to be frightened by bluff or threat into making harmful or unnecessary concessions. In the opposite direction, but equally as dangerous, is the hazard of impatience. Sudden loss of temper, usually ill-timed and almost invariably resulting in angry and useless exchanges of epithets, is very characteristic, as are frequent references to waste of time or broken engagements.

Closely related to the foregoing is the problem of management's generally maintaining a solid front. The danger is that, if all members of the committee have freedom of expression, disagreements may crop up and be aired in front of the union, or damaging statements or commitments made, ranging in seriousness from mere annoyances to virtual catastrophes.

Probably the most effective way to control such dangerous possibilities is to insist at the outset upon a program of teamwork under the full control of a competent chairman. This chairman should be the *only* member of the committee empowered to make commitments or to accept or reject the union's proposals. In addition he should be appointed for his skill and qualifications as a negotiator, even if this means that he will be directing operating executives who outrank him in the organizational hierarchy.

THE USE OF LEGAL COUNSEL IN NEGOTIATIONS

At one time many managements retained legal counsel to negotiate their collective-bargaining agreements with unions. This, in turn, generally forced the unions to match attorney against attorney and often resulted in long drawn out legal battles. It also produced long, technical, and tedious labor agreements, which were so complicated that they usually were never completely understood by many members of the negotiating committees, and certainly not by shop employees and supervisors. This view appears to be shared by many employers. For example, one management negotiator states: "As a matter

of fact, the absence of lawyers on both sides, in our opinion, aids the successful negotiation of the contract";⁴ and a guide on collective bargaining published by the National Association of Manufacturers indicates that "it is not generally considered desirable for the legal counsel to conduct actual negotiations."⁵

Some unions also seem to be of this same opinion. Indeed, one steel workers' representative has stated his position with considerable force:

If there's anything worse than one lawyer in collective bargaining, it's two lawyers, and I don't mean that facetiously. If there's anything worse than a lawyer present on one side, it's a lawyer present on both sides.⁶

However, despite general agreement on the undesirability of having lawyers as active participants in the negotiations, the use of competent legal counsel in an advisory or consultative capacity can at times be of distinct help to both sides. For example, questions of labor law may arise, either prior to or during the course of negotiations, concerning which the advice of counsel may be invaluable. In addition, legal counsel might well be brought in to review the wording of the proposed contract clauses before final commitments are made.

SIZE OF THE NEGOTIATING COMMITTEE

It is impossible to formulate a definite rule for the size of negotiating committees. Generally speaking, however, smaller groups, preferably of six or less, will meet fewer difficulties and will more quickly reach agreement.

Those who have attempted to conduct negotiations with large committees have found it practically impossible to achieve

⁴ W. I. McNeill, "Working With a Master Contract," *American Management Association Personnel Series No. 57, Working With Union Grievance Procedures*, p. 4, New York, February 1942.

⁵ The National Association of Manufacturers, *Collective Bargaining*, p. 12, New York, July, 1943.

⁶ Neil W. Chamberlain, *Collective-Bargaining Procedures*, pp. 39 and 40, American Council on Public Affairs, Washington, D. C., 1944.

results unless each side channelled its arguments through its chairman or permitted the other members of its committee to speak only with the approval of its chairman. Sometimes, to facilitate negotiations, large committees are broken down into subcommittees and each is assigned a specific problem. The conclusions reached by the subcommittees are then reviewed by the larger groups. Another method sometimes used is to designate a small group to do the actual negotiating and to permit additional representatives of both sides to sit in as spectators, with no voice in the proceedings.

Generally speaking, the individual or group representing the company will be members of the firm's own management and, if there are any outsiders, they will be in the minority. This is also true in most instances of the union's representatives. Occasionally, however, the union negotiating committee will not include any of the employees working in the unit in question. This condition is unfortunate, because there are definite advantages both to management and to labor in having employees on the union's committee. Their presence during the bargaining enables the workers to gain a much better appreciation of management's problems, facilitates the selling of the proposals that have been agreed upon to the balance of the local's membership, and is basically important in the initiation of effective long-term cooperation between labor and management.

In some instances management has tried to dictate who may or may not represent the union during collective-bargaining negotiations. Sometimes, for example, an employer will attempt to set up the requirement that employees be included on the union's bargaining committee or that non-employees be excluded. Neither side has any legal grounds for such action. The most that either can do is to make suggestions concerning the method of constituting the other side's bargaining committee. Thus, in the Lane Cotton Mills Company case the National Labor Relations Board declared that ". . . it does not lie in the mouth of an employer to question the method of selection by a union of its bargaining committee; that is solely an intra-

union matter.”⁷ Likewise, the Labor-Management Relations Act makes it an unfair labor practice for a labor organization “to restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.”⁸

THE UNION’S PREPARATIONS FOR NEGOTIATIONS

In a very basic sense most unions start preparing for the ultimate negotiation of the agreement at the beginning of the organizing drive. This is true because it is invariably a part of organizing tactics to offer a platform of the benefits that will accrue to the employees if they join the union. Frequently, too, the individual who organizes the employees in a plant will also help to negotiate the subsequent labor agreement if the union gains recognition. This gives greater continuity to the union’s presentation of its case since this individual undoubtedly helped to formulate the initial demands and therefore understands them thoroughly.

It is typical for a union to be guided in making its original contract demands by the standard items desired by the international union, the promises made to the employees during the organizational drive, the past practices of the company and the suggestions and requests made by individual union members and stewards.

Discussions with employees of the company at the union’s organizing meetings will enable the individual who will subsequently be responsible for the union’s negotiations to gain much valuable information on the industrial-relations policies and practices of the employer. Items such as the company’s past practice in paying for holidays, its wage scale, its policies regarding leaves of absence, call-in pay, time study procedures, discharge and discipline, and many others involving the relationship of the employer and the employee are of particular

⁷ See: Lane Cotton Mills Co., 9 NLRB 952.

⁸ See: Section 8(b) (1) Labor-Management Relations Act of 1947.

interest for subsequent use in negotiations. Many unions provide "standard contracts" ⁹ to guide their negotiators and some also have extensive research departments, one function of which is to provide and correlate information that will assist their negotiating committees. In this connection the President of the American Federation of Labor has said: "In the past, and especially in the last fifteen years, the American Federation of Labor has done much to help unions develop technical knowledge and factual information necessary to bring a better understanding to the workers and their representatives at the bargaining table of the operating problems of industry, and of production, and management problems facing their employers. Technical research facilities have now been established by the majority of our national and international unions, and have provided them with new tools for meeting issues which confront workers and employers." ¹⁰ It is of interest to note that as of January 1, 1943, at least fifty-three labor unions maintained research organizations.

The mass of material collected during the organizational drive and furnished by union headquarters must, of course, be reviewed and carefully analyzed by the union negotiators before meeting with management. The Director of Research of the Textile Workers Union of America has aptly stated this problem: "The preparatory work is not completed with drafting the union's proposals. They must be studied, evaluated and, if necessary, revised before they are set and publicized. Thorough study familiarizes the negotiating committee with the

⁹ The tendency of international unions to develop and actively fight for "standard contracts" which will be the same from firm to firm is a real and most disturbing problem to employers. Like all attempts to establish patterns, these "standard contracts" overlook the simple fact that each employer has different operating and financial problems and that what one can do others may not be able to do at all. When a parent union ties down an international representative to a specific "standard contract" and forbids him to deviate from it, collective bargaining is made immeasurably more difficult.

¹⁰ From a statement made by William Green, November 5, 1945, at the opening session of the National Labor-Management Conference called by President Truman.

issues and supporting data and permits it to determine their reasonableness. The more adequate the preparation, the better able is the committee to negotiate the terms of the contract. It will thereby be conditioned to employer arguments and rebuttal, and better able to counter them.”¹¹

THE EMPLOYER'S PREPARATIONS FOR NEGOTIATIONS

As the result of such meticulous and well-organized research, many union negotiating committees are certainly as well prepared as are the management negotiators facing them and, in some instances, are probably better prepared. If this is the condition existing when negotiations begin, management has no one but itself to blame. On too many occasions managements have merely sat back, watched the organizing campaign progress, and then, after the union was certified as the representative of the employees, have acted surprised when they received their copy of the union's contract demands. There is no good reason why this should be allowed to happen. The sensible and constructive course of action in the vast majority of cases is for management to devote its energies to careful preparation for negotiations, starting almost as soon as it is evident that a serious organizing drive is on. Preparations begun at least two months in advance of the time when formal negotiations can reasonably be expected to start will undoubtedly pay dividends. In any event the latest possible starting time should be when the union is certified as the bargaining agent.

The first step in the preparations should be to decide who shall negotiate for management or act as the chairman of the negotiating committee. This individual logically should bear the major responsibility of preparing for the negotiations and is fortunate in being in a far better position to gather more

¹¹ Solomon Barkin, "Union Strategy in Negotiations," *Collective Bargaining Contracts*, p. 27, The Bureau of National Affairs, Inc., Washington, D. C., 1941.

information (and more accurate information) than his union counterpart.

The company's preparations consist, as in the case of the union, primarily of gathering facts. A good starting point is to jot down all of the industrial relations policies and practices of the organization that can be determined or discovered. In some cases these will already have been reduced to writing in the form of an employees' handbook or some other type of policy statement. If such documents are not available, discussions with foremen, supervisors, operating executives, and the payroll and accounting departments will be needed to gain a clear concept of what the concern's industrial relations practices are.

In addition it is highly desirable to make a survey of the industrial relations practices of a representative number of firms in the same geographic area and in the same industry. Thus a metal-products manufacturing firm in Chicago should survey the practices of twenty or thirty other firms of comparable size in the Chicago area. If the company happened to be small, some of the larger and better-known firms in the same area should be included in the survey, since employee members of the bargaining committee are quite likely to refer to the practices of these concerns in an authoritative manner. This sometimes is the result of the employee's own previous employment in the concern or of information secured from friends or relatives, and at other times it is the result of information secured from labor agreements or published policy statements that have been gathered by the union.

The same survey procedure can equally well be applied to firms in the same type of business that are located in other parts of the country. This is especially important where national competition is close and where, as a consequence, increased labor costs might play a particularly significant role in determining the employer's competitive position.

Some of the non-monetary industrial relations policies that should be of decided interest are: seniority, leaves of absence, grievance procedure, arbitration, extent to which employees or the union participate in time study or job evaluation, restrictions

on activities of union representatives, and discipline procedures.

In addition, information should be secured concerning the various direct or indirect monetary issues that in all probability will be raised by the union. Again, the employer should review his existing practices and policies with respect to a variety of items, such as: the wage scale, hours of work, paid holidays, overtime payment practices, night-shift bonus, call-in pay, vacations, severance pay, rest periods, clean-up time, automatic or merit progression (if rate ranges are used), insurance plans, and any other items that appear significant in the local situation. The data on wages should be summarized to indicate the average base and earned hourly rate paid to the employees who are included in the bargaining unit. The average should also be converted so as to show the average weekly, monthly, and yearly base and earned income. To make such figures more significant, some firms also calculate the additional hidden income derived from such items as vacations, insurance premiums paid by the company, night-shift bonus, and the like.

As in the case of the non-monetary industrial relations policies previously mentioned, a survey of a representative group of firms in the same geographic area and in the same industry (regardless of geographic distribution) will undoubtedly be of very substantial assistance.¹² In no other way, as a matter of fact, can management make a satisfactory factual determination of how it stands on a relative basis, or of what it can or should concede during negotiations.

However, even this in itself is not enough. The setting up of "bargaining limits" necessarily requires an accurate and complete knowledge of the firm's future sales and income potentials. This can best be obtained with the active assistance of the sales and production departments and the treasurer or comptroller. As one experienced negotiator comments: "After all, it is only on the basis of the sales estimate that the production department can know how fully they will operate and

¹² For a detailed discussion of procedures for conducting wage surveys the reader is referred to: R. C. Smyth and M. J. Murphy, *Job Evaluation and Employee Rating*, Chapter 9, McGraw-Hill, New York, 1946.

also how much money will be available for possible wage increases.”¹³

In the case of both monetary and non-monetary considerations, it is easy enough for most persons to appreciate the value of a survey of the practices and policies of other firms, for this is an aid in determining how far to go in acceding to certain union demands or in formulating counter-demands. However, it is often hard to convince managements that a survey of their own existing internal policies and practices is equally beneficial. They tend to feel that a survey is quite unnecessary, because those who will participate in the negotiations usually not only helped to formulate the policies and practices but also have lived with them through the years. But unless a set of clearly-written policies is in existence, this is a fallacious and dangerous position to take. It is amazingly easy to overlook inconsistencies and glaring inadequacies when operating with unwritten laws. One purpose of the survey is to reveal these very problems and to enable the negotiator to avoid the disadvantage of finding the union's committee better informed than management with respect to existing policies and practices.

Naturally, the survey technique is by no means the only avenue that is open for the acquiring of information which may be helpful prior to and during negotiations. The various leaflets, pamphlets, and other literature distributed to the employees by the union during the organizing campaign deserve careful review. It is quite likely that in their releases the union will single out and criticize certain allegedly undesirable policies, practices, or conditions and, in some instances, indicate what the union's demands will be in connection with them. This information can be very useful since it is to be expected that those items about which the greatest hue and cry have been raised during the organizing campaign will appear in some form or other as demands upon management when the parties eventually meet at the bargaining table.

¹³ E. H. van Delden, personal communication, January, 1948.

The company's negotiator will also find it helpful to secure copies of any labor agreements which the union may have negotiated elsewhere in the same geographic area or in the same industry. The majority of concerns are perfectly willing to furnish such information, even to their competitors. A review of these labor contracts will give the company negotiator a reasonably good cross-section of what the union has been able to secure elsewhere. Also, quite often certain clauses will tend to appear in many of the agreements, worded in approximately the same manner, thus showing that these items are considered desirable and necessary by the union.

Needless to say, all of the data that may be accumulated should be carefully checked for accuracy since the integrity of management will be seriously open to question if the union is able to prove that any of the information is wrong. The facts that have been compiled should be prepared in some convenient form and carefully indexed for easy reference during the course of the negotiations. In many cases it will be found that reducing information to pictorial form such as pie charts, or presenting it in diagrams or some other graphic form will make it much easier for the participants in the negotiating conferences to grasp the facts. This is particularly true of data relating to monetary issues.

Some of the information will be useful only for rebuttal of union counterclaims or assertions. In other cases the information will be valuable for clarifying or simplifying management's own demands or its opposition to the union's demands. In these latter cases it is good policy to reproduce the material in sufficient quantity so that each committee member may have a copy. If used in this manner the exhibits must be attractive and effective in order to support the points in question most advantageously.

There is at least one other local source of information which can be used by management. As soon as the names of the employees who are to serve as members of the union negotiating committee are known, their personnel records should be

reviewed. At this time it is possible to determine each employee's previous working experience and earnings, educational background, marital status, etc. In addition, the length of time that the employee has been with the company, the various jobs held, the promotions received, and the amount and frequency of any pay increases can be noted.

It is quite probable that such information will never be of any direct value to the management. In spite of this, however, there are indirect benefits that make it worthwhile to use this entirely legitimate device for securing a better understanding of the committee members. For example, references and comparisons may be phrased in terms that are related to the employees' backgrounds and previous experience and examples may be selected that are particularly forceful to certain employees.

ADDITIONAL SOURCES OF INFORMATION

The two most fruitful sources of bargaining ammunition for both the union and the company have already been discussed. In the case of the union, its own files, library and research staff, and the information secured during the organization campaign, and, in the case of the company, the information on its own policies and practices and on the policies and practices of other firms in the area and industry—these represent the principal sources of information for the parties. However, valuable contributory and supplemental data can frequently be secured from such organizations as the American Management Association, the National Industrial Conference Board, Inc., the Bureau of National Affairs, Inc., Prentice-Hall, Inc., the United States Chamber of Commerce, the National Association of Manufacturers, the Industrial Relations Counselors, Inc., university industrial-relations libraries, and a variety of employer or trade organizations. In addition, help may be secured from the various divisions of the U. S. Department of Labor and from numerous other government agencies.

DISCUSSIONS WITH SUPERVISORY PERSONNEL

Managements often tend to forget their foremen and supervisors in preparing for and carrying on negotiations. In most instances this is a serious mistake. Some firms seem to feel that they have avoided this error, if, during the union's organizational drive, they admonish their supervisory force to adhere strictly to those provisions of the Labor-Management Relations Act that apply to the circumstances. While such guidance is both desirable and necessary, it must be remembered that it is a negative, not a positive, course of action. Certainly, if this is the total extent of management's explanation to the supervisor, he will be very much in the dark about what is going on. He will realize, of course, that events are taking place which will inevitably affect his relationship with the employees under his supervision. Unless he is told, however, it is unlikely that he will know in what ways or to what extent he will be personally affected.

It is not uncommon for the supervisor to be much less well-informed on the progress of negotiations than the people who work for him. When he has to depend on shop rumors and one-sided reports, he can hardly be blamed if his reactions are negative. Nor can he be blamed if, when he finally receives a copy of the labor agreement, he approaches it with feelings of suspicion and antagonism. Through no fault of his own, he has received the worst possible preparation for the important task of making the agreement work in the shop. However, by some standards, such supervisors may be considered fortunate since there have been cases where managements have not even given their supervisors copies of the agreement.

When negotiating the initial contract, it is often difficult and inexpedient to discuss details in advance with the foremen and supervisors. The risk is always present that important parts of management's negotiating strategy may inadvertently be transmitted to the union, since the supervisory staff is closer

to the employees than other management groups. In addition, because of the absence of a previously existing contract to use as a reference point, the supervisors' comments and suggestions in the case of the initial contract are not likely to be as helpful at this time as they will be later.

Though specific discussion of the details of management's plans is not advisable, yet one or more group discussions with the supervisory force in advance of the start of negotiations might well be held. Besides being a good occasion for reviewing management's legal responsibilities, this is the time to discuss generally some of the major items that will inevitably appear in the agreement. At these meetings the supervisors can also be encouraged to ask the questions that have been bothering them, thus helping them to clear the air.

Similarly, after negotiations have gotten under way, an occasional meeting to report progress will serve to keep the supervisory force informed and interested. As a consequence it will be less difficult later to secure good understanding and intelligent maintenance of the agreement.

In the case of negotiating succeeding contracts many companies have found it very helpful to review the existing agreement in detail with the supervisory force prior to entering actual negotiations. This accomplishes a dual objective—it fortifies the supervisor's recognition of his role as a part of management and it provides tangible and useful information concerning the existing contract. Foremen and supervisors are better qualified to report on the strengths and weaknesses of the agreement than any other management group because they have lived closer to it and have been more affected by its contents. It is quite logical that the best informed group should be approached for suggestions on how the agreement may be strengthened or made more workable.

PHYSICAL SETTING FOR NEGOTIATIONS

The place in which the meetings are held is important and the furnishings and facilities to be provided should not be over-

looked in preparing for negotiations. There are many psychological barriers to be broken down in the process of bargaining. The addition of further barriers, induced by dirty, uncomfortable, or distracting surroundings, merely makes achieving mutual agreement more difficult.

The meeting-room should be large enough for the negotiators to be comfortable, should be reasonably quiet, and also well-lighted, heated, and ventilated. Ashtrays, writing materials, solid, comfortable chairs, and a suitable conference table should be provided. In other words, all of the niceties and conveniences ordinarily furnished for any important business conference should be supplied.

In addition, it has been found helpful to have an extra room or rooms adjacent to the conference room. "This permits each side to take a recess during the sessions whenever one is deemed necessary. Unless this is provided for, a vital phase of the bargaining process is neglected and the negotiations are unnecessarily prolonged, because it is during a recess that one side may agree to change its position without loss of face. A recess frequently leads to realization that the stand taken should be modified to secure an agreement which will be advantageous to both parties."¹⁴

Customarily the negotiations take place on company property. This is usually convenient for the majority of the representatives of both parties. In most cases unions have made no objection to this practice. As a matter of fact, many company negotiators feel that they are entitled to have the meetings where it is most convenient to them.

Although in some instances the employer has insisted that the union's negotiators meet with management at the home office of the company or at some site far removed from the local plant affected, the union is entitled to demand personal conferences at the place where the plant concerned is located. In

¹⁴ Leonard J. Smith, *Common-Sense Collective Bargaining*, American Management Association Personnel Series, No. 3, vol. 21, p. 164, New York, November, 1944.

one case involving this issue the NLRB held that "the procedure of collective bargaining requires that the employer make his representatives available for conferences at reasonable times and places and in such a manner that personal conferences are practicable."¹⁵ Also section 8 (d) of the Labor-Management Relations Act provides that it is the mutual obligation of the parties "to meet at reasonable times and confer in good faith. . . ."

Under some circumstances, however, it has been found helpful to both parties to conduct the negotiations in some neutral location in the area, such as a public building or hotel. As an example, negotiations in the glass-container and flint-glass industries are held in Atlantic City in alternate hotels—first the manufacturers' and then the union's.

Negotiations conducted away from the plant have the advantage of eliminating the phone calls and other routine business interruptions that sometimes are allowed to distract the parties when on company property. Other considerations that may have to be given recognition are the fact that few factory offices are designed to accommodate comfortably a committee of any size or that the meetings may have been preceded by strike or strong labor unrest, in which case the negotiations might get off to a smoother start in some other place where the conferees would not be subjected to employee pressures. Chamberlain remarks in connection with one bargaining conference: "massed pickets became so vociferous with their cries of 'Give them hell' and their blaring of auto horns that at times it was difficult for the conferees to understand each other."¹⁶

In general, however, it seems that the location of the meetings, if acceptable to the parties, is not nearly as important as is assuring that the space and facilities that are provided are adequate.

¹⁵ See: *P. Lorillard Co.* (Louisville, Kentucky); *P. Lorillard Co.* (Middletown, Ohio) 16 NLRB Nos. 69, 70.

¹⁶ Neil W. Chamberlain, *Collective-Bargaining Procedures*, pp. 68 and 69, American Council on Public Affairs, Washington, D. C., 1944.

LENGTH AND FREQUENCY OF BARGAINING SESSIONS

Most experienced negotiators feel that collective-bargaining sessions should not be allowed to run on indefinitely. To control this, specific time limitations are sometimes set up. For example, the Ford Motor Co. recently suggested to the union that three or three and one-half hours be established as the maximum time for each meeting. While such specific limitations are concrete and businesslike, there is always the danger that too literal an adherence to a schedule may waste time by breaking up a meeting just before the issue or issues under consideration are settled. If this is allowed to happen it will often be necessary at the next meeting to start over again almost from the beginning.

To get around this danger many negotiators deliberately avoid attempting to set a definite time-limit and instead generally try to control the length of the sessions by watching for a convenient stopping-point that will not break the continuity of the bargaining in progress. Naturally, no precise rules can be laid down for all cases. However, it is probably safe to say that bargaining sessions normally should not last longer than five or six hours, with eight hours as the outside limit.

The reasons for setting some broad time-limitations are not hard to identify. After a number of hours of negotiating, even with interludes of relaxation, the tension and accumulated fatigue that arise out of the genuine hard work involved in bargaining inevitably result in rising irritability, displays of temper or petulance, and, in some cases, unsound decisions. In addition, the constant reiteration of the same points by both parties may tend to make agreement more difficult rather than easier. When such conditions have developed, the adjournment of the session is almost invariably the best procedure. In the interval between meetings tempers have a chance to cool, the issues can be viewed in fresh perspective, and the parties have the opportunity to plan compromises or face-saving proposals.

Bargaining sessions should be frequent enough to show good faith but should be spaced far enough apart to permit sufficient time for the preparation of counter-proposals and counter-demands between sessions. The schedule should also allow time for both management and union representatives to take care of other duties and responsibilities between meetings.

If there is less than one meeting per week both parties tend to lose touch with the details of what has taken place. More than three meetings in a week, on the other hand, become burdensome and allow insufficient time for preparation between sessions. On the basis of their own experience the authors' preference is usually for two or three weekly sessions, an arrangement which has been satisfactory to the unions.

MINUTES OF MEETINGS

If kept at all, the minutes of negotiating meetings will be of two general types—either verbatim reports of everything said during the conference or abbreviated statements of the highlights of the meeting and the conclusions reached. Minutes of this latter type are advantageous to both parties in maintaining a reasonably good perspective on the negotiations and in insuring that important points are not forgotten. In addition, such minutes have the further advantage to management that they can be used for the company's protection if the union files charges of failing to bargain in good faith.

Generally speaking, however, summaries of the proceedings have little value except to those who have prepared them. Management normally prefers its own summary and tends to look with suspicion on the union's. The union feels very much the same about management's minutes. For example, the United Automobile Workers (CIO) bluntly admonishes its union committeemen: “. . . secure careful notes at the bargaining conferences. Don't trust company minutes.”¹⁷

Because of the limited usefulness of summaries for a formal

¹⁷ United Automobile, Aircraft and Agricultural Workers of America, CIO, *How to Win for the Union*, Third Edition, October 1, 1941.

and official record, some negotiators use a verbatim transcript of the entire proceedings. Even in this instance, however, copies of the transcript should be jointly checked for accuracy after each session and then signed by both parties. If this is not done, the possibility of endless argument over omissions and errors will still remain, with the consequent danger of repudiation of the record by one of the parties at some later time. Where mechanical methods of recording the proceedings are used, this problem is, of course, less likely to arise.

The proponents of the verbatim transcript claim that it substantially reduces subsequent misunderstandings and that it makes it easier to carry on the negotiations in an orderly and dignified manner. The reactions of one management group are reported as follows: "Negotiators for the West Coast paper and pulp industry have called the stenographic report their 'congressional record'." ¹⁸

This favorable reaction is not confined to management. The Glass Bottle Blowers' Association, for example, has the standard practice that a stenographer be present to record everything said during negotiations. The transcript then becomes the basis of subsequent interpretation of the meaning and intent of any contract clause about which doubt has arisen. Sweden provides what is perhaps the ultimate extension of this practice of using the verbatim transcript to clarify the terms of the agreement. In that country "minutes of the negotiations which record agreed interpretations of certain provisions of the contract are signed by the contracting parties, and are enforceable as a part of the contract." ¹⁹

In some instances copies of the verbatim transcript have been prepared and distributed to all employees. While ostensibly the purpose of such a procedure is merely to acquaint the employees with the progress of the negotiations, it is quite likely

¹⁸ Neil W. Chamberlain, *Collective-Bargaining Procedures*, p. 63, American Council on Public Affairs, Washington, D. C., 1944.

¹⁹ J. J. Robbins, *The Government of Labor Relations in Sweden*, p. 18, The University of North Carolina Press, American Scandinavian Foundation, New York, 1942.

that the party which is issuing the reports is also attempting to sell the employees on its side of the story. As a rule, if this is done at all, it is done by management. However, occasionally a transcript is prepared and distributed to its members by the union.

Many experienced negotiators prefer that no verbatim minutes of the conferences be taken. This viewpoint is based on the conviction that the making of such a record generates attitudes of suspicion and distrust on the part of the participants, with particularly bad effects on employee members of the committee. It is argued, in addition, that the knowledge that one's every word is being taken down makes many people nervous and interferes with their normal modes of free expression. This is likely to be especially important in the case of persons of moderate education. Other negotiators are apprehensive as to the use that may subsequently be made of phrases out of context. Chamberlain, for example, states: "One union representative admitted that there was a tendency for local unions to be unduly technical in interpreting statements in the record, and to take phrases and paragraphs out of context to support their arguments."²⁰ This situation has also been described as follows: "As far as the record is concerned, we have run into situations where people are not talking to one another, but are talking for purposes of the record that they can take back or that they can use later on in their relations with the other side. We have quite frequently put our foot down and thrown the stenographer out and forced people to talk to one another and bargain straight across the table without considering what future use might be made of their words."²¹

Finally, experience has revealed that the verbatim record does not always yield the clear solution that optimists expected. All too frequently, after the disputed contract clause has been read and the material in the verbatim record pertaining to

²⁰ Neil W. Chamberlain, *Collective-Bargaining Procedures*, p. 63, American Council on Public Affairs, Washington, D. C., 1944.

²¹ The Louisiana State University, *Proceedings of the 1942 Louisiana Personnel Conference*, p. 60, May 2, 1942.

it has been reviewed, heated argument will then start as to what was meant by what was said.

Many successful labor agreements have been negotiated both with and without the use of verbatim minutes. Probably, too, unsuccessful agreements have resulted from both methods. If such minutes give promise of helping negotiations, they should be given a fair trial. If successful, the practice should be retained and, if unsuccessful, it should certainly be dropped. In no event, however, should the use of a verbatim record be allowed to obscure the importance of the negotiators' joint responsibility to phrase all contract clauses as clearly, carefully, and completely as possible and to make sure that all agreements and understandings are incorporated into the contract that is finally signed by the parties.

IV

NEGOTIATING THE COLLECTIVE- BARGAINING AGREEMENT

IN THE case of the initial labor agreement the first bargaining meeting between the negotiators is important both because it marks the active beginning of the collective-bargaining history of the parties and because what transpires at this meeting will, to some extent, determine the trend of the subsequent negotiations. At this time the members of the management committee have an opportunity to clear the air—to indicate by their demeanor and their statements that the negotiations will be conducted in good faith between equals.¹ Likewise, by quiet, businesslike conduct, the union committee has an opportunity to impress and reassure management.

¹ The National Labor Relations Board has pointed out that the employer is obligated to treat the union with "the same dignity as it would any business concern with which it conducted business relations." "Fourth Annual Report of the National Labor Relations Board," p. 68.

THE FIRST MEETING

After general introductions have taken place, management's spokesman, particularly if the negotiations are taking place on company property, might well indicate the company's sincere desire to see the bargaining proceed as rapidly as possible and lead to an agreement acceptable to both parties. It would be suitable at this point for the union's negotiating spokesman to reply in kind, thus setting a desirable general tone for the series of succeeding conferences.

Sometimes one or both of the parties will enter negotiations in a blustering, bellicose fashion, with the result that antagonisms are immediately generated. These tactics only make the situation more difficult and as long as such attitudes persist, it is rarely possible to arrive at a satisfactory agreement. In addition, if the employer is the prime offender, employee members of the union committee will quickly report his attitude and antics back to the shop, thus developing new schisms and complicating the company's industrial-relations problems.

DISCUSSION OF THE UNION'S PROPOSED CONTRACT

Occasionally the union will mail a copy of its proposed contract to the company prior to the first meeting or the parties may exchange copies of their respective contract proposals before they meet to commence negotiations. If this is not done, the union normally will present the document at the meeting. However, in some cases, when the parties first meet, the union may not have prepared its demands in written form at all. In such a situation the management spokesman should certainly request the union committee that they submit their proposed contract in writing. This request is eminently reasonable since fewer misunderstandings are apt to result when working from a written document than when considering oral proposals and also since under the Labor-Management Relations Act

either party can insist that the contract finally agreed upon be reduced to writing.

If the union's proposal is available, it is helpful to devote the first meeting to a reading and general discussion of the contents. Each clause is usually reviewed to clarify its purpose and intent. During this review, the various members of the union's committee should be given the opportunity (and encouragement) to talk freely, management's objective, as might be expected, being not merely to clarify the meaning of the clauses but also to assess the relative importance of each in the minds of the committee members. In view of this, the company's representatives will ordinarily avoid offering many specific comments or entering into extended arguments over any of the issues at this time.

When a lengthy set of demands is presented by the union at the first meeting, some management negotiators question the advisability of reading and discussing them as outlined above. These negotiators prefer to call for a recess in order to analyze the proposals and prepare questions on sections that are not clear. When this has been done, they then return to the negotiating session and discuss the items which they feel require clarification.

After examining and discussing the union's proposals the management negotiators, as a rule, will have little difficulty in grouping the clauses into three broad classes: (a) those that were included in the proposal for their trading or swapping value; (b) those that represent fundamental issues in the eyes of the union or the employees; and (c) those that the union would like to gain but actually has very little hope of securing. In addition, one or more unusual clauses will often be found in the union's proposal as the result of the insistence of some one employee or of a small group of employees. As might be expected, the union committee as a whole will in most cases be basically uninterested in this latter type of clause. If this is the case, the committee, although it will go through the motions of pressing the issue, will count on management to convince the interested employee (if, as frequently happens, he is a

member of the committee) of the inadvisability or impossibility of granting the request.

After the union's proposal has been jointly reviewed, the company's spokesman will as a rule inform the union that management will prepare comments or counter-proposals for the next bargaining session. The experienced union negotiator will not be surprised or annoyed at this since he will recognize that the first meeting is actually just a setting of the stage. In essence, the general review of the union's proposed agreement is a prelude to the real bargaining which will come in subsequent meetings.

DEFINITION OF BINDING COMMITMENTS

Before the first meeting is adjourned many management negotiators feel that it is advisable to indicate to the union that all agreements on individual clauses are tentative and will not be considered binding until the final contract has been signed. In view of the myriad of comments, proposals and counter-proposals that are made by the parties during the course of bargaining, it is obvious that some such understanding is necessary. The need is even greater where it is the practice to initial individual clauses as they are agreed to. Otherwise, it is possible that the initialing might subsequently be construed as binding. In order further to clarify the point it is desirable to specify that, regardless of when various tentative agreements are reached, the effective date for all clauses will be the date on which the contract is signed. This makes it quite clear that parts of the agreement will not be applied retroactively, unless, of course, specific retroactive provisions have been negotiated and included in the agreement. Needless to say, management's position on the above points will be strengthened if it is presented in writing to the union at the beginning of negotiations.

Another aspect of the problem of defining binding commitments is that of the status of oral agreements or understandings reached during the negotiations. Since the parties to collective bargaining seldom air their contract troubles in courts of law,

the question here is not so much one of the legality of such understandings as it is of their *meaning*. Like gossip, oral agreements have an unfortunate tendency to become distorted with the passage of time. As a consequence problems are sometimes needlessly generated.

If all understandings are put in writing much trouble of this type can be avoided. To be sure, it is still possible to disagree over the interpretation of what has been written. However, there is a concrete basis from which to start in such cases. This makes the whole problem much simpler both for the parties and for any arbitrator who may be called in.

Some managements and unions have resolved the problem of misunderstandings over oral commitments by agreeing to a contract clause specifically denying their existence. The following is an example:

All understandings and agreements between the parties are incorporated in this contract. There are no oral understandings.

On the other hand, one or both parties may be reluctant to go on record with so definite and strong a clause. Thus managements occasionally will request that an agreement be left on an oral basis or be covered by a letter which will not be a part of the signed agreement. There are many reasons for such requests. For example, small parts manufacturers in some instances have not wanted their large customers to know of certain contract provisions that have been agreed upon. Sometimes, too, executives have feared ridicule from associates in other concerns if the nature of certain of their commitments to the union were known.

AUTHORITY OF NEGOTIATORS

It is advisable for the negotiators on each side to ascertain the extent of the other's authority. The company spokesman might well ask whether or not the union committee is empowered to make binding decisions and to sign the final agreement without further approvals. In almost all cases the reply will be

that the committee has no final authority and is empowered to agree only tentatively. In turn the union spokesman may want to know whether or not his management counterpart must receive final approval of tentative agreements from higher authority.

If each side clearly understands the limitations on the authority of the other, many subsequent recriminations and embarrassing misunderstandings can be avoided.

PAYMENT OF EMPLOYEE NEGOTIATORS

During the first meeting the union will most likely raise the question of payment for the time spent in bargaining meetings by the employee members of its negotiating committee.

Some management negotiators feel that it is unreasonable to expect the employer to bear the cost of time spent by union negotiators in working out a new agreement. During World War II this viewpoint was usually shared by the War Labor Board on the grounds that the cost of negotiating a contract is one that the union should be willing to bear. On the other hand, some managements pay their employees for all time lost from work in collective-bargaining negotiations and others pay for half the time lost, on the grounds that the proceedings are of mutual interest to both the union and the company.

INTERIM AGREEMENTS

Near the beginning of the negotiation of the first labor agreement between the parties the union may suggest that, since the bargaining will undoubtedly extend over a protracted period of time, certain subjects should be covered in an interim agreement which would be effective until such time as the final contract is signed. If this is suggested, the union will probably want to include a temporary grievance procedure as well as seniority provisions and some items of a monetary nature. In addition, if it is close to the vacation period, a request may also be made for an interim agreement covering a vacation plan.

There is much to be said in favor of instituting an interim grievance procedure, especially where the first contract is with an aggressive union—a fact which will probably contribute to extending the length of the negotiating period. Such a procedure will permit many petty employee grievances to be settled that otherwise might become serious and will help generally to maintain sound industrial relations in the concern while the negotiations are progressing. This is advantageous, of course, for both the union and the company.

However, there are certain hazards which require considerable discretion on the part of management in the handling of grievances under an interim procedure. There is always the danger that, not knowing what provisions the final agreement will contain, supervisors or other management representatives may establish highly undesirable precedents in the course of settling grievances. If this should happen it will put the company at an unnecessary disadvantage in the negotiations since the union can use these precedents to provide concrete and factual support for their demands. As an example, if the company is attempting to negotiate a clause providing that both ability and seniority will be considered when making promotions, it is a serious handicap to find that the union is able to cite current grievances over promotions which have been settled on the basis of the factor of seniority alone. To avoid this problem some management negotiators prefer to handle during or after the bargaining sessions any grievances that may arise.

However, if management agrees to the use of an interim grievance procedure it might well be stipulated that all grievances handled under the procedure must be settled solely on the basis of the policies and practices currently existing in the concern. Further, it should be made clear that the last step of the interim procedure shall terminate with management.

From the company's point of view, it is doubtful if, in most cases, any issues other than the grievance procedure should be covered by an interim agreement. A broader interim agreement may well slow down negotiations, particularly if the union secures on an interim basis the points in which it is most

interested. Furthermore, the bargaining position of one or the other of the parties may be weakened by granting such agreement on points and issues that could well have been held back to enhance their legitimate later bargaining value.

In the case of negotiations taking place after the expiration of an existing contract there is no problem of interim agreements. The bargaining sessions are usually started before the existing contract expires and, if they run past this point, it is customary to extend the life of the previous agreement for a few weeks. Any such extension, of course, would have to be mutually acceptable and should be set forth in written form and signed by both sides.

However, in some cases one or the other of the parties may refuse to agree to an extension, either as part of an effort to expedite negotiations or as a device to force the opposition to accept more favorable terms. For example, the United Mine Workers usually refuse to extend their expired agreements. As the president of this union, John L. Lewis, once put it: "We will not trespass upon the mine owners' property."

PREPARATION OF MANAGEMENT'S COUNTER-PROPOSALS

The union's demands cannot merely be ignored or laughed off as preposterous. The National Labor Relations Board has stated that management must negotiate "in good faith in a bona fide attempt to reach a collective-bargaining agreement."² Likewise, in the past, the most important element of negotiation procedure attributed by the Board to the requirement of good faith was the counter-proposal. Even though the new Labor-Management Relations Act (section 8 [d]) apparently does not require either party to agree to a proposal or to make a concession, nevertheless in terms of the practical realities of bargaining some counter-proposals or concessions, on both sides,

² "Third Annual Report of the National Labor Relations Board," pp. 96-97.

are necessary if the parties are ultimately to reach agreement.

Regardless of how much difficulty and strife may occur during negotiations, there are ultimately only three possible ways of disposing of the union's demands. Eventually, every clause requested by the union will have to be settled in one of these ways:

1. The union must drop the clause;
2. Or management must accept it;
3. Or the parties must agree on some modified version of the clause or on some substitute which will be mutually acceptable.

In preparing for the bargaining sessions it is important that, after the first meeting, the management negotiators carefully review the union's proposals in the light of the foregoing three possibilities. To derive maximum benefit from such a review, management should be well fortified with facts and should use them in an intelligent and systematic manner. As a desirable first step, each clause proposed by the union should be considered in relation to the company's existing policies and practices in order to ascertain in detail the extent to which it goes beyond them. In addition, the demands should be checked against the policies and practices of other firms in the same industry and in the same geographic area. The data accumulated through surveys of these industries should be used for this purpose. Finally, a careful analysis should be made to determine the effects that the various clauses in the union's proposal would have, if accepted, on the cost of producing the products or services of the concern, as well as the extent to which they would unreasonably restrict or interfere with management's operation of the business.

ADVANTAGES OF USING COUNTER-PROPOSALS

The use of counter-proposals is an important element of collective bargaining. Their prime value to management is fourfold:

1. The submission of counter-proposals tends to influence favorably any conciliator, mediator, or arbitrator who might ultimately enter the case.
2. While the making of a concession is apparently not required under the Labor-Management Relations Act of 1947 (Section 8 [d]) nevertheless the submission of counter-proposals to the union will undoubtedly react to management's advantage just as it did under the National Labor Relations Act. The following statement taken from a past decision of the Board is a good illustration of this point: "Consideration of . . . the successive counter-proposals of the respondent, and its substantial concession, leads us to conclude that the respondent negotiated in good faith and that it sought to reach an agreement with the Union."³
3. The counter-proposal is an important element in bargaining strategy. Once management determines what it is willing to give on any specific request, a counter-proposal for an even lesser amount or degree is useful in negotiations. One company representative expresses this thought as follows: "In preparing this counter-proposal, it would be nice to set forth the provisions in as liberal terms as you would be willing to agree to; but unfortunately, from my own experience and from discussions I have had with other company negotiators, this is seldom possible. There must be room for compromise."⁴
4. The use of the counter-proposal tends to put the initiative of bargaining in the hands of the side that makes the offer. In other words, the one party is forced to consider the other's proposal and either accept or reject it, or, in turn, make a further counter-offer. The psychological advantage of securing and retaining the offensive in negotiating is not inconsiderable.

³ See: Adams Brothers Salesbook Co., National Labor Relations Board, 88 17 NLRB 974.

⁴ Alan C. Curtiss, "How to Negotiate a Labor Contract and Make It Work," *Proceedings of the Twenty-Seventh Silver Bay Industrial Conference*, p. 123, The National Council of the Young Men's Christian Associations, July, 1944.

It should be recognized, of course, that the counter-proposal is not exclusively a management device. On the contrary, the reasons set forth above in support of management's use of this bargaining weapon apply equally cogently in the case of the union. Unions can and do utilize counter-proposals to good effect during negotiations.

However, while counter-proposals are an important phase of collective bargaining, one side or the other will occasionally make a demand that is so basically unacceptable as to permit no compromise. Obviously, when such demands are made, the recipients must reject them. In this case the basic reasons for not being able to accede should be made clear to the other side at the *proper* time during the negotiations.

MANAGEMENT DEMANDS OF THE UNION

All too frequently collective-bargaining agreements are merely compilations of what the company must do or cannot do. Many management negotiators, although they may make effective use of counter-proposals, have overlooked the practical value of making specific demands of their own upon the union. The president of one company aptly states this viewpoint as follows: "Management does not seem to realize that it too has the right to make demands—indeed, not only the right but the responsibility and obligation to make them. The present scope of bargaining must be so broadened that the labor conference becomes a true bargaining conference. Management must demand and obtain responsibility from labor. It must demand and get cooperation from unions in the successful operation of the individual business. It must demand and get cooperation in maintaining quality and cutting costs so that more and better goods will be available for consumers."⁵

Demands made by management upon the union serve two

⁵ Thomas Roy Jones, "The Scope of Collective Bargaining," *American Management Association Personnel Series No. 81, Management's Stake in Collective Bargaining*, p. 49, New York, May, 1944.

purposes. First, a carefully thought out, aptly phrased demand has considerable bargaining value during the negotiations. One observer comments: "To propose costs nothing; and it has been the author's experience that, at the very least, when an employer enters counter-demands, or perhaps even original demands, he considerably strengthens his bargaining position."⁶ Second, the demand, if secured in the contract, may be of practical value to management in the operation of the business. An example of the latter might well be the union's agreement to the inclusion of a "no strike, no slow-down" clause.

However, certain bargaining hazards exist in making demands upon the union. Some managements have erroneously considered the function of their demands to be primarily that of annoying the union. Following this line of reasoning such managements have made meaningless or worthless demands and, much to their surprise in some cases, have found the union accepting them and asking for concessions of real importance in exchange.

To avoid this hazard, all proposals that are made by the employer should be carefully formulated. Instead of the vague, pompous generalities so frequently encountered, the demands should be specific and tangible. As an example, every labor agreement implies that the employees covered by the contract are bound by it. Management might well request that the agreement contain an explicit statement of this, such as: *Each and every employee covered by this agreement is bound by its terms.* In addition, where concessions are made by management in negotiating they need not be wholly one-sided. The responsibilities of the union and the employees in connection with many concessions can and should be made clear. In most instances this can readily be accomplished by proper phrasing of the clause or clauses involved. One example of this is shown in the last sentence of the following clause covering rest periods, which appears in a current labor agreement:

⁶ Robert M. C. Littler, "Managers Must Manage," *Harvard Business Review*, vol. 24, No. 3, p. 375, Spring Number 1946.

There shall be two (2) ten (10) minute rest periods with pay for each regular shift, at stated times consistent with production requirements. *Employees shall not start their rest periods before the official starting time and shall be back at their place of work promptly at the expiration of the rest period.*

BARGAINING STRATEGY AND TECHNIQUES

The strategy and techniques of successful bargaining and negotiating are many and varied. For centuries in commerce, trade, and politics the techniques have been practiced and developed to a fine and complex art. The vendor in an oriental bazaar and the purchasing agent in modern commercial life both engage in bargaining. A good example of the highest type of modern collective bargaining is the negotiation of international treaties. At least collective bargaining to achieve a labor agreement does not normally encounter the problems of different national or racial customs or of having to conduct negotiations through an interpreter because of the language barrier.

Like any art, the art of collective bargaining involves the subtle and complex intermingling of many skills and techniques, some highly significant, some minor, but all blended and nicely adapted to the characteristics and needs of the individual practitioner. It is difficult to attempt to analyze the component parts of the art because the pattern involved, i.e., the relationship of the parts, is so important. In view of this difficulty the following observations concerning some of the bargaining techniques that have been used successfully are offered with full recognition that, taken individually, their significance in actual use cannot be completely represented.

I. TALK FACTS

The use of facts stands out as a fundamental technique in a mature system of collective bargaining. In describing negotiations in the hosiery industry, Dr. George Taylor makes the following observation:

A factual approach to collective bargaining is now taken by the parties as their guide. Negotiations for a new agreement have become more and more a joint appraisal of a host of facts bearing upon the state of the industry and the wages that can be paid.⁷

Unfortunately, however, the importance of the use of facts in collective-bargaining negotiations is frequently overlooked. Many negotiators, possibly through laziness or conceit, tend to rely too much on their persuasiveness. This same persuasiveness, if effectively supported by facts, would, in most instances, greatly strengthen the presentation of their case. In this connection, one union handbook states: "The negotiator must be well posted. He cannot know too much about general conditions in the industry in order to refute the employer's arguments with specific facts and reasons in any given instance. If he knows more than the employer about the industry, he can win the battle of wits."⁸ Obviously, as unions become increasingly better prepared, it is even more important that management's negotiators be adequately supplied with factual information. This is true since management's emotional case is much weaker than the union's. It is one thing to be emotional about "downtrodden employees" but much more difficult satisfactorily to present the problems of management with any similar appeal.

Like any other bargaining device the use of facts is not a panacea for all negotiating problems. However, there is no doubt that, as factual arguments are introduced into collective bargaining by the parties, many disagreements or conflicts can be eliminated or reduced. Nevertheless, even after the facts have been skillfully injected into the discussion, and even if they are accepted by the other side at face value, disagreement may still exist over certain items, such, for example, as how the gross income of the concern shall be distributed. As Chamberlain has pointed out: "A word of caution is advisable. While factual collective bargaining tends to develop a smoothly func-

⁷ Twentieth Century Fund, *How Collective Bargaining Works*, p. 453, 1942.

⁸ Educational Department, *International Ladies' Garment Workers' Union, Handbook of Trade Union Methods*, p. 63, New York, 1937.

tioning employer-union relationship, it guarantees no millennium. Divergent interpretations of jointly determined facts will still provide disagreements. Conflicts of interest will continue to exist. Nevertheless, it seems beyond doubt that a factual basis for negotiations is an essential requirement for a mature system of collective bargaining.”⁹

2. EXERCISE SELF-CONTROL

The successful negotiator recognizes that he must always retain his self-control during negotiations, regardless of the provocation offered by the other side. In addition, obscenity or personal vilification cannot be countenanced by either side at any time. However, this does not preclude a display of anger or other emotions on occasion when such a display shows promise of helping to win a point. It does mean, however, that emotional displays should at all times be under the negotiator's control and not merely random outbursts. Hill and Hook illustrate this point perfectly: “At a meeting before a panel of the War Labor Board, a spokesman for the union put on a great show of being angry with the company. His face became red, his eyes popped, he spoke loudly and emphatically and showed all the signs of an individual very much exercised. Later, the chairman of the panel mentioned to the labor representative on the panel that this particular union leader certainly had a bad case of temper. The labor representative on the panel replied: ‘Oh, no, I happen to know this individual very well. I personally spent hours and hours in a hotel room several years ago teaching him how to give the appearance of having lost his temper without actually doing so.’”¹⁰

3. TELL THE TRUTH

Centuries ago Montaigne expressed the practical dangers of falsehood in the following words: “He who is not sure of his

⁹ Neil W. Chamberlain, *Collective-Bargaining Procedures*, p. 98, American Council on Public Affairs, Washington, D. C., 1944.

¹⁰ Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, p. 240, McGraw-Hill, New York, 1945.

memory should not undertake lies." While this admonition appears to apply to all human relationships, it is particularly pertinent to the field of collective bargaining. The successful negotiator must be an individual of high personal integrity whose word is accepted by the other side and who fully intends to live up to the spirit and intent as well as to the letter of his commitments.

However, while the foregoing definitely means that what is said should be the truth, it does not necessarily imply that the negotiator should tell all that he knows. The occasional holding back of information is a legitimate and, if judiciously used, a desirable bargaining tactic.

4. ASK FOR MORE THAN YOU EXPECT TO GET

One of the foremost bargaining techniques in any negotiation situation is that of asking for more than is ultimately expected. This permits subsequent compromise on the negotiator's part. In addition, since he usually has no way of knowing how much in the way of concessions he may finally secure, he may actually come out with more than he had originally expected. This device is extensively utilized by unions and can also be used successfully by management in the preparation of its counter-demands. For example, one experienced management negotiator states: "Asking for more than is expected is an inherent part of bargaining, and management should never hesitate to use the device. Those on the other side of the table are impressed by keen business acumen; in fact, stiff counter-proposals are often valuable to union leaders in tempering the demands of constituents. There is seldom contempt on the part of union people for a management which bargains astutely, sharply, firmly, honestly, and straight from the shoulder. The belief that stiff counter-proposals will incite the union to harder demands is fallacious. It is that kind of thinking which has prevented greater management progress in bargaining results. It is defensive, fearful, and regressive thinking. It has no place in

adept bargaining. Management should adopt a typical union slogan: 'give only to get;' and it must know what it wants."¹¹

5. OFFER LESS THAN YOU EXPECT TO GIVE

A corollary to the negotiator's asking for more than he expects to get is to offer less than he expects eventually to give. To some, such tactics may sound like a child's game, or appear similar to purchasing a rug from a street peddler. However, no matter how distasteful the process may be to any specific individual, experienced negotiators have found the technique to be very necessary in order to protect their interests.

"The union will invariably present demands for at least twice as much as they expect to get. On the other hand, they will expect that the management's first offer is less than the management will eventually be prepared to agree to. In preparing its first proposal, therefore, management negotiators should bear in mind that negotiations are a fluid, dynamic process, requiring flexibility on the part of the negotiators and requiring room for adjustment in management's position as negotiations progress."¹²

6. MAKE FINAL OFFERS FINAL

It is poor bargaining technique for a negotiator to make a flat "final offer" unless he sincerely means that it actually is his last and best offer. Careless and injudicious protestations by a negotiator that he has gone the limit only to be followed in short order by even more liberal proposals can seriously prejudice the satisfactory disposition of many demands. Under these circumstances, the opposing committee members naturally tend to lose confidence in the negotiator's sincerity in making his so-called final offers and tend to persist in believing that he will grant further concessions if really pressed. At best, such a state

¹¹ C. F. Mugridge, "Negotiating a Labor Contract," *American Management Association Personnel Series No. 91, Practical Approaches to Labor Relations Problems*, p. 44, New York, 1945.

¹² Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, p. 255, McGraw-Hill, New York, 1945.

of affairs promises to slow down the negotiations substantially and at worst it may lead to a much less favorable settlement of the demand in question than might otherwise have been reached. This latter point is effectively illustrated by the following case: "The writer sat on an . . . arbitration panel, where the company negotiator made five final 'take it or leave it' propositions to the union. The union committee was unable to determine where it stood, and was afraid to accept any offer for fear the company might make a better one. So the case was not settled, and finally was carried over to the National War Labor Board which gave the union all it demanded in the way of wages, and tossed in a maintenance of membership shop for good measure. The insincerity of the company's negotiators convinced the board it was not bargaining in good faith."¹³

7. STICK TO PARTICULARS

A mistake commonly made by inexperienced negotiators is to argue on the basis of "principles" instead of "particulars." In the majority of instances where the phrase: "We won't do it as a matter of principle" is heard, what is actually meant is simply: "We don't want to do it."

The uselessness that so frequently characterizes a discussion of principles is the result of two major factors: (1) Such a discussion is necessarily based largely on generalities, abstractions, and theoretical considerations, the consequence being that it is difficult to keep the discussion anywhere near the specific problem that the parties are allegedly trying to settle; (2) Such a discussion, because beliefs or basic convictions are so intimately involved, tends to arouse strong emotional reactions that could never be produced by a discussion of particulars. For instance, it is far easier to argue long and passionately over the general principle of wage incentives than it is to become excited over a specific piece work rate.

Generally speaking, it requires but few experiences with ques-

¹³ John C. Aspley and Eugene Whitmore, *The Handbook of Industrial Relations*, p. 136, Dartnell Corporation, Chicago, 1943.

tions of principle to convince the serious negotiator that the process of bargaining will be simplified and expedited if the discussions, in as large measure as possible, ignore abstractions and are confined to particular issues. Selekmán, for example, observes: "Any negotiator who even scents a 'principle' approaching the deliberations from the inner recesses of his own philosophy of what labor relations 'ought' to be should smother it in an assiduous concentrated discussion of particulars. . . ." ¹⁴

8. QUESTION THE EVIDENCE

The technique of questioning the validity of the facts or data submitted by the other party is one that can upon occasion be used to good advantage by both sides. If the opposition, upon being challenged to produce proof of data which have been offered or to support conclusions drawn from the data, is unable to do so, much of the force of their argument will be lost. Similarly, if it is possible to produce evidence that disproves or discredits the facts that have been presented by the opposition, the same result will be achieved.

This approach, if used too often, can degenerate into mere baiting of members of the opposing committee and, as such, will accomplish little except to fray tempers. On the other hand, if sparingly used and if applied largely in the case of important demands, the technique will often lend substantial aid to its users.

9. TIME ALL MOVES CAREFULLY

Undoubtedly the parties will have accumulated a considerable mass of material during their preparations for the negotiating sessions. However, it sometimes happens that, through failure to recognize that the timing of the presentation is an important art, one or the other of the parties will fail to derive full benefit from the facts that have been so laboriously gathered.

Quite often, like the proverbial novice teacher who gives his

¹⁴ Benjamin M. Selekmán, "When the Union Enters," *Harvard Business Review*, vol. 23, No. 2, Winter, 1945, p. 138.

whole course in the first lecture, the inexperienced negotiator will make the mistake of blurting out all of his facts and arguments early in the bargaining process. In such a situation a clever opposition negotiator can very probably find one or more real or alleged errors of fact or conclusion in the presentation, thus reducing or nullifying its value, or can effectively force the unskilled negotiator on the defensive by requesting substantiation of some or all of the facts.

Generally speaking, good timing involves holding most factual arguments well in reserve until the bargaining settles down and the real issues become apparent. Even at this stage of the negotiations it is not necessarily desirable to bring forth all the factual data at the same time. Sometimes certain information can be used to best advantage by being held still further in reserve for possible rebuttal purposes. And occasionally good timing may actually involve never using certain data at all.

There is, unfortunately, no formula that can be cited which will simplify this problem of timing, but the sensitive and alert negotiator will find that, with greater experience, his skill will gradually increase in this respect.

10. TAKE ADVANTAGE OF INTERMISSIONS

The importance of the intermission or recess as a technique of bargaining strategy should not be overlooked by the conferees. After a prolonged heated discussion of a disputed issue, a short intermission will sometimes provide an ideal cooling-off period. In addition, such recesses provide time in which to decide whether or not to accept certain proposals or to formulate counter-proposals.

Often, when one side has made a proposal or has offered a "package" involving several proposals, the spokesman for the party that has made the offer will at the same time suggest that he and his committee take a recess so that the opposition can discuss the matter freely among themselves. This forthright use of the intermission as an integral part of the bargaining process is one of the most constructive ways in which the technique may be used. It is especially helpful where there is reason

to believe that certain of the opposing committee members are favorably impressed. If this is actually the case, those committee members who are sold will probably be better qualified than anyone else to win over their own hold-outs.

11. MAKE USE OF "PACKAGE" COUNTER-PROPOSALS

Most negotiators withhold their agreement to certain clauses during the negotiations, saving them for their final bargaining value. Thus, as the bargaining nears its conclusion there will be a number of issues upon which the parties cannot agree. However, among these there probably are, or should be, some that both the company and the union would be willing to agree to and others that have been demanded by both sides that each would be willing to drop. The successful negotiator knows when and how to make a "package" offer designed to settle as many issues as possible. Usually this is one of the most significant means of cleaning up a series of disputed points, that the parties have at their command. However, as has already been suggested, the "package" technique will be most effective in the latter stages of the negotiations and ordinarily should not be used as a substitute for settling issues wherever possible on their own merits.

APPEALS TO PUBLIC OPINION

Currently there appears to be a definite trend on the part of both management and labor to strive to influence the reactions of the general public as a technique of collective bargaining strategy. Strong appeals to public opinion are increasingly common, the prime objective of these being to demonstrate that the opposing party is unfair and unreasonable in its position.

The United Mine Workers and the mine owners are a good example of an instance in which both parties have for some time apparently conducted at least part of their negotiations in the newspapers. As of more recent date, other unions, notably the United Automobile Workers of America (CIO) have also used the same approach. Paid advertising space in newspapers

or magazines is also used, often to precede or supplement the news stories. Occasionally, too, other approaches are used, as, for example, the union which directed its appeal to the President of the United States. Of course, union and labor papers have for years printed labor's case for their readers.

Recently, too, appeals to government agencies for intervention in negotiations have occurred quite often. Usually such requests are directed to State Mediation Boards or to the Federal Mediation and Conciliation Service, although in at least one case the President of the CIO asked the Secretary of Labor to intervene and to request the United States Steel Corporation to continue negotiations in the presence of a conciliator. To illustrate the extent to which government has recently intervened in collective bargaining, in this same case some of the negotiations eventually took place in the White House in Washington, and at one point the President of the United States himself assumed the role of mediator.

RESOLVING THE FINAL ISSUES

Both negotiating groups have a definite obligation to continue to bargain in good faith so long as there is the slightest possibility of resolving the final issues. In fact, this is basically the most fruitful and constructive means of resolving their disputes that the parties have at their disposal. "In every instance where a stalemate looms, it is the responsibility of both management and the union to explore the problem in point, discuss it constructively and from all angles, and keep the door open for suggested solutions."¹⁵

Here is where the highest skills of the negotiators are required, and here is where the final offers and compromises are made.

However, the National Labor Relations Board has declared: "It is hardly necessary to state that from the duty of the em-

¹⁵ *Collective Bargaining*, The National Association of Manufacturers, p. 17, New York, July, 1943.

ployer to bargain collectively with his employees there does not flow any duty on the part of the employer to accede to demands of the employees. However, before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with his employees. Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. Of course, no general rule as to the process of collective bargaining can be made to apply to all cases. The process required varies with the circumstances in each case. But the effort at collective bargaining must be real and not merely apparent.”¹⁶

There inevitably comes a time in the experience of every negotiator when he finds himself clearly deadlocked with the other side over one or more major issues. In this connection the Board has also said: “If after a genuine attempt to reach agreement, an impasse has been reached, the employer is not required to continue futile negotiations. Should the situation change, however, the employer must, on request, resume collective bargaining.”¹⁷ If negotiations have reached an impasse, eventually the issue or issues will be settled through the use of one or more of the following methods:

1. By continued negotiations between the parties in the presence of, or with the assistance of a mediator or conciliator.
2. By submission of the disputed issues to voluntary arbitration.
3. By the use of strike or lock-out.

CONCILIATION

Often, when the negotiators have reached what appears to be an insurmountable impasse they will resort to conciliation or

¹⁶ The Sands Manufacturing Company and Mechanics Educational Society of America, 1 NLRB 546.

¹⁷ *Seventh Annual Report of the National Labor Relations Board*, p. 49, U. S. Government Printing Office, Washington, D. C., 1943.

mediation. However, in many instances bargaining deadlocks are not actually deadlocks at all. It is not uncommon for negotiators to sit tight, either to play safe because they are not sure how little the other side will accept, or to save face because they had previously insisted that they would not give in. A conciliator who is respected by the parties and has secured their confidence can often, in talking to each side privately, determine the real reasons for their stand, why they feel as they do, and what compromises, or substitute proposals, if any, they would be willing to offer or accept. If the parties are not too far apart, the conciliator can sometimes find the key to agreement and thus resolve the issues. However, the conciliator or mediator cannot force the parties to agree. "Since the conciliator has no legal powers of compulsion, his effectiveness is dependent entirely upon the prestige of his office, the assistance he can render by reason of his knowledge of the facts involved, his skill as a negotiator, and the willingness of the parties to compromise or come to terms."¹⁸

Increasingly the Federal or State conciliation services are used for this purpose, although, in some cases, a local or national public figure, known and respected by the parties, will be called upon or will volunteer his services. During World War II the Federal Conciliation Service was the avenue by means of which disputed cases were channelled to the National War Labor Board. As a result, many firms and union locals experienced their first contact with this agency. Some of those so affected were impressed by their experience and derived a better appreciation of the full meaning of collective bargaining from it. However, it is unfortunate that in many other cases the parties, in their eagerness to get the case before the jurisdiction of the National War Labor Board tended to regard conciliation merely as a necessary evil, and gave it scant opportunity to be effective.

The facilities of the Federal and State conciliation services will undoubtedly be used more extensively in the future than

¹⁸ *Union Agreement Provisions, Bulletin No. 686*, p. 13, Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C., 1942.

they have been in the past. As our industrial-relations practices mature, as their respective social responsibilities become more clearly recognized by the parties, and as the conciliation services themselves are strengthened by the addition of more capable, experienced, and impartial personnel, a wider acceptance of the principle and practice of conciliation is almost certain to occur.

With the passage of the Labor-Management Relations Act an independent agency called the Federal Mediation and Conciliation Service was created under Section 202 (a). All of the former conciliation and mediation activities of the Department of Labor, and the personnel and records, were transferred to this new agency.

The new agency "may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce." It should, however, be pointed out that neither party to such a dispute has to accept any of the advice or proposals of any conciliator who may be assigned to the case. In the language of the Act: "The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act."

In addition to the foregoing voluntary procedure applicable to most labor disputes, the Act provides other means for handling "a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof" which "will if permitted to occur or to continue, imperil the national health or safety." In such cases the President of the United States may appoint a board to inquire into the dispute and ascertain the facts. The board's written report is then made public by the President. The President can then direct the Attorney General to seek an injunction against such strike or lock-out. The Norris-La Guardia Act is waived to permit the granting of an injunction under these circumstances. At the end of sixty days the board of inquiry makes a final report to the President and

within fifteen days the National Labor Relations Board conducts a secret election among the employees in the bargaining unit to determine whether or not they are willing to accept the employer's last offer. Within the next five days the results of the election are certified to the Attorney General who then must ask for a dissolution of the injunction. If the dispute is not settled at this point the President shall submit to Congress a full and comprehensive report of the proceedings "together with such recommendations as he may see fit to make for consideration and appropriate action."

The average employer will never encounter this procedure. In effect it is a forced mediation plan coupled with a cooling-off period in an effort both to prevent and to resolve labor disputes that are of major import in our economy such as the recent coal and railroad work stoppages.¹⁹

VOLUNTARY ARBITRATION

If the efforts of the conciliator fail or if the positions of the parties on the disputed issues are so far apart that the negotiators feel that resort to conciliation would be useless, they may agree to arbitrate their differences.

Although voluntary arbitration, like conciliation, is being increasingly used as a device to settle collective bargaining disputes, it should be recognized that the arbitration of the meaning of the clauses of an existing contract is one thing, while the arbitration of unresolved issues resulting from the efforts of the parties to negotiate a contract is entirely different. In the first instance, the scope of the arbitrator's decision is restricted by the content and phraseology of the contract, as originally agreed upon by the parties. Thus the arbitrator's role is merely that of an interpreter of the agreement. In the latter case, however, the arbitrator is far more than an interpreter. He is, as a matter of fact, vested with practically all of the collective-bargaining prerogatives of both parties, in so

¹⁹ See: Sections 201 through 209, Labor-Management Relations Act.

far as the issues that have been referred to him are concerned. In view of this, it is not surprising that most managements and many unions are definitely opposed to the arbitration of issues that are unresolved in contractual negotiations.

The reasons for the opposition to placing such great power in the hands of a third party are not difficult to understand. Since the parties have been unable to agree on the residual issues throughout the course of their negotiations, it is certainly reasonable to assume that they regard them as being of considerable importance. This being so, one or both of the parties will usually object to the arbitration of such issues for fear that the arbitrator might turn out to be uninformed on industrial problems generally or on the numerous facets of the disputed issues in the case at hand. They also recognize the possibility that he might be unduly susceptible to purely emotional appeals, or that he might attempt to placate both sides and simply "split the middle" in his award. One experienced arbitrator who has served on over 300 cases observes: "Never forget, too, that experience has shown arbitrators to be human. They frequently exercise their constitutional right to be wrong. They are inclined, sometimes, to take the easiest way out by simply dividing their decisions, one for the union and then one for the employer."²⁰

STRIKES AND LOCK-OUTS

In the final analysis, if the parties refuse to make the concessions or compromises that will settle the issues, in all probability economic sanctions will be used—the strike in the case of labor and the lock-out in the case of management. However, it should be pointed out that in these circumstances the employer is not absolved from his responsibility to negotiate with the representative of his employees. On this point the NLRB has stated: "The act requires the employer to bargain collectively with its employees. Employees do not cease to be such

²⁰ Robert M. C. Littler, "Managers Must Manage," *Harvard Business Review*, vol. 24, No. 3, p. 373, Spring Number, 1946.

because they have struck. Collective bargaining is an instrument of industrial peace. The need for its use is as imperative during a strike as before a strike. By means of it, a settlement of the strike may be secured.”²¹

Before actually taking any overt action the negotiators will often resort to direct or indirect threats of what they will do in an effort to gain their ends. The company may claim, for example, that it will be forced into bankruptcy if it accedes to the union's demands, or that it will either voluntarily go out of business or move the plant elsewhere if further efforts are made to force it to give in. Commenting in this regard the NLRB has observed: “Thus a common theme is the threat to move the plant or to go out of business altogether. . . . Such a threat may be peculiarly effective in highly mobile industries in which the movement by employers to unorganized and low-wage areas is notorious, as, for example, the clothing industry, or the shoe industry.”²² The union, on the other hand, might threaten a strike either by conducting a vote among the membership or by empowering the negotiating committee to call a strike at its discretion. Recognizing the fact that some industries are highly seasonal and consequently quite vulnerable during their busy periods, many unions have the practice of capitalizing on this condition by timing their bargaining negotiations to coincide with the rush season. This, of course, makes the threat of economic sanctions much more effective. As an example, department stores reach their peak between Thanksgiving and Christmas and canning plants are busy when crops are being harvested and are often idle at other periods of the year. In such cases an alert union could obviously make capital of the employer's position if it so desired and timed its actions or threats properly.

Although lock-outs, as such, are currently not often used as a negotiating weapon by management, it is true that some concerns have moved or closed plants to escape an aggressive,

²¹ See: Matter of Columbian Enameling and Stamping Co., 1 NLRB 181.

²² *First Annual Report of the National Labor Relations Board*, p. 73.

truculent labor organization or to give vent to their aversion to recognizing and bargaining collectively with unions. Selekmán cites the case of one concern which "had for some years been running away from the union. From its original home city in a Middle Atlantic State, it had moved southward, then returned again, only to back-track north all the way into New England, where it located first in a large metropolitan center and ultimately in a smaller industrial community."²³ Obviously, however, managements are not always motivated by the desire to run out on unions when they close down or change the location of plants.

Unions make use of the strike as a negotiating instrument much more frequently than managements use the lock-out. This is understandable in view of the fact that the strike (or sometimes even its latent threat) is the more powerful weapon. There is no doubt that, for every company that is willing and able to instigate the financial loss involved in a lock-out, there are many which are anxious *not* to suffer such loss. These latter firms are generally also desirous of avoiding the costly consequences of a strike. Because of this very basic economic consideration, labor has in many instances found that strikes, or sometimes merely the serious threat of strike, have proved to be highly effective in gaining the concessions that have been demanded. In this connection, too, the fact must be kept in mind that, although there are laws which force an employer to bargain with his employees under specified circumstances, there are no laws that require him to accede to the demands that are made upon him. Thus, if labor did not have (and use) the right to strike it is apparent that few collective-bargaining agreements would be consummated to the satisfaction of both of the parties involved.

Like any other tool of collective bargaining, strikes must be used with intelligence and discrimination if effective results are to be achieved for the union. Where the outcome of a strike

²³ Benjamin M. Selekmán, "Wanted: Mature Managers," *Harvard Business Review*, vol. 24, No. 2, p. 239, Winter Number, 1946.

is unsatisfactory the cause may usually be found in failure to take account of some important factor that should have been considered at the outset. A strike may be called at a time when management, for various economic reasons, such as the season of the year or extent of finished goods inventories, may not be too seriously affected. In some instances failure properly to estimate the financial reserves of the workers and the union in advance may lead to an unsuccessful strike. A weak union treasury usually means that adequate strike benefits cannot be paid and, if this condition exists at a time when the workers' personal savings are also scant, family, social, and economic pressure in favor of a back-to-work movement may become too strong to be ignored or controlled.

If the issue or issues over which a strike is called are not sufficiently significant in the eyes of a substantial group of employees, they may refuse to lend their wholehearted support. Although this may not prevent the calling of the strike, in time, such a dissident group tiring of enforced idleness, may be able to win over enough converts to get the strike terminated before it has accomplished its purpose. To avoid this hazard the union's leaders must evaluate the issues carefully and plan their campaign of action in a way that will create not only a *logical* but also a widespread and strong *emotional* conviction of the rightness and significance of their demands.

Management's probable reactions must also be considered in view of the unresolved issues since its desire to resist will usually be proportional to the severity of the demands. This is most commonly seen in the case of wage issues where a firm may weigh its anticipated strike losses, such as cessation of income and continuing overhead expenses, against the long-term cost of a requested rate increase. For example, a company facing a twenty-cent-an-hour wage increase request would almost certainly feel that it could afford to hold out longer in an attempt to get the union to drop or reduce its demand than would be the case were only five cents an hour at stake.

In addition, a union that is contemplating strike action has many even more imponderable factors with which to cope. Out-

standing among these are the emotional aspects of each specific situation and the degree of responsibility and control that local union leaders can be expected to exercise. All too often strikes have been started prematurely or in direct violation of existing labor agreements (or even the union's own constitution) because of strong emotional upset on the part of the membership coupled with irresponsibility and lack of control of their members on the part of local union leaders.

PHRASING THE AGREEMENT

Although legislation in Sweden²⁴ provides that all labor contracts shall be prepared in written form when agreement between the parties is reached, there was no such specific legislation in this country prior to the passage of the Labor-Management Relations Act. However, we did have definite forces at work in that direction. The NLRB had been sustained by the Supreme Court in ruling that refusal to reduce a negotiated labor contract to writing constituted an unfair labor practice.²⁵ In addition, The Railway Labor Act and Title X of the Merchant Marine Act require employers covered by these laws to file copies of all collective-bargaining agreements with the National Mediation Board and the Maritime Labor Board, respectively. Thus, in effect, this forces the parties to prepare their agreements in written form.

Other factors had also accelerated the trend toward written labor contracts in the United States. During World War II the National War Labor Board prepared arbitration clauses in hundreds of dispute cases and directed that they become a part of the labor agreement between the parties. Once the parties incorporated arbitration provisions into their contract, it then became vital for their mutual protection that the agreement be reduced to writing. Finally, the Labor-Management Relations Act (Section 8 [d]) provides for "the execution of a written

²⁴ The Swedish Collective Contracts Act of 1928.

²⁵ NLRB v. H. J. Heinz Co., 311 U. S. 514.

contract incorporating any agreement reached if requested by either party . . .”

The proper phrasing of the various clauses in the agreement is obviously very important. There is little excuse for the ambiguous clauses which are still often encountered. Sometimes this is the result of inadvertence or lack of experience and sometimes it is deliberate in a mistaken attempt to slip something over on the other party. A contract negotiated in this latter fashion will be difficult to live with and will inevitably cause hard feelings and disputes.

Labor and management generally agree that the proper objective is to present the clauses in a clear and concise manner so that they will readily be understood by everyone. One union handbook, for example, contains the following recommendation to its negotiators: “Insist that your contract be written in the simplest, clearest language possible.”²⁶ Likewise the National Association of Manufacturers states in a booklet prepared for its members: “All clauses should be clearly understood by both parties and the language should express that understanding clearly and without ambiguity, so that the contract may be carried out in a spirit of good will.”²⁷

In phrasing any specific clause of an agreement, the final choice of words is just as much a matter of collective bargaining as is the negotiation of the basic intent and meaning of the clause. As has been previously pointed out, elegance of expression must necessarily be subordinated to simplicity and clearness. Unfortunately, this fact is all too often overlooked by negotiators who suffer from pride of authorship to such an extent that proposed changes in wording will cause long and bitter argument. Although it is obvious that a firm stand is required in opposing the deliberate or inadvertent introduction of “sleepers” or trick phrases that alter the agreed-upon mean-

²⁶ UAW-CIO, *How to Win For the Union*, Third Edition, Detroit, Mich., October 1, 1941.

²⁷ National Association of Manufacturers, *Collective Bargaining*, p. 18, New York, July, 1943.

ing of a clause, this is probably the only circumstance that fully justifies being devoted to one's own wording.

Perhaps a good test of the clarity of any clause might be to ask: "Is this clause not only clear enough to be understood, but is it so clear that it *cannot be misunderstood* by an employee or a third party who knows little of the background?" Unless this question can be answered affirmatively, the parties would be well advised to rewrite the clause to minimize subsequent misunderstandings and avoid the necessity of resorting to arbitration in order to resolve ambiguities.

NEGOTIATING SUBSEQUENT AGREEMENTS

Normally the first agreement is the most difficult to negotiate. This is so because every issue must be discussed extensively and the necessary clauses written and rewritten until both parties are willing to accept them. In addition, progress is often slow because of the tendency of the parties to withhold agreement on more strategic issues in an effort to attain final bargaining advantage.

In negotiating subsequent agreements, on the other hand, it will usually be found that many clauses in the initial contract are satisfactory as originally worded. As a result, the area of disagreement is narrowed from the start. Another factor which tends to expedite and facilitate succeeding negotiations is that the members of the opposing committees usually have had time to get better acquainted and more accustomed to working with one another.

However, it is not always true that succeeding contracts are easier to negotiate. In some cases, one of the parties may have gained an unreasonable advantage as the result of the other's lack of experience or weak bargaining position. Under these circumstances the negotiation of a second agreement may well be prolonged and bitter, culminating in strike action. The same result may also be forthcoming in any negotiations if exorbitant demands are persistently adhered to.

Success in completing succeeding labor contracts involves

the same fundamental problems as in the initial agreement. The work of preparation will probably be somewhat less, but the same procedures should be followed. Neither party can afford not to compile adequate factual data before the negotiations, particularly on possible wage issues. In the case of management, especially, it is dangerous to become complacent about preparing adequately for subsequent negotiations. In so far as the strategy and techniques of bargaining are concerned, it goes without saying that these are essential whether a first or a tenth contract is involved.

As a phase of its preparation for the negotiation of succeeding agreements, management can, as previously discussed, strengthen its liaison with its supervisors and acquire information of positive value regarding various undesirable aspects of the old agreement. This point has been aptly stated by Curtiss as follows: "You have had experience with the agreement that is terminating. You will want to amend the provisions that have not worked out well. I would suggest that department heads confer with their foremen two or three months before the termination date, to get their reactions to the various clauses. Then, in conference with the department heads the negotiator can prepare the company's amendments. This method not only gives you the benefit of the experience of your foremen under the contract; it also gives them a feeling that they have participated in drafting it. After all, it is the foremen who must make a contract work."²⁸

²⁸ Alan C. Curtiss, "How to Negotiate a Labor Contract and Make It Work," p. 125, *Proceedings of the 27th Silver Bay Industrial Conference*, The National Council of the Young Men's Christian Associations, New York, 1944.



THE NATURE AND SCOPE OF THE COLLECTIVE-BARGAINING AGREEMENT

A LABOR agreement which is lengthy and specific, spelling out in detail the policies and procedures governing the relationship of the parties is often termed a legislative agreement. In contracts of this type the parties attempt, while at the bargaining table, to anticipate most of the various problems that may ultimately arise and to provide clear and concise rules or formulas by means of which to dispose of them. As a rule, the negotiation of such contracts is both difficult and time-consuming.

In the administrative contract, on the other hand, no such effort is made, the result being that such contracts are characteristically brief and contain only the more basic clauses, which are phrased in rather general terms. The purpose of such brevity and generality is to allow the parties greater flexibility in working out what they believe to be sound and equitable solutions

to the wide range of problems that they will encounter in their daily living together.

In spite of the rather marked differences between them, both administrative and legislative contracts have worked out successfully in practice, and, conversely, both have also at times failed to yield satisfactory results. The key to success is apparently not so much the form of the agreement as the way in which the parties choose to go about using and living under it. This is amply evidenced on a large scale by the experiences of Sweden and Great Britain. In Sweden the legislative type of agreement is predominant and works out well. It is probable that the Swedish preference for this type of contract is in part at least a reflection of certain national characteristics. In support of this thesis Norgren observes: "The Swedes are a methodical and formality-loving people, who prefer to behave according to well-defined precepts . . ." ¹ On the other hand, the British, who have also had a long history of successful collective bargaining, strongly prefer the administrative type of agreement. Generally speaking, their contracts are shorter and less detailed than ours, the parties preferring to work out their problems as they arise.

In this country many examples of both types of agreement are encountered. Some current contracts in the railroad industry cover one hundred printed pages, and in the pressed-glass departments of the glass industry some of the working rules cover over fifty pages. Similarly lengthy and detailed agreements are also found in the newspaper- and book- and job-printing trades.

In the rubber industry "with few exceptions, the agreements are of the administrative rather than legislative type; they set forth the general framework and leave the details to be filled in by daily negotiation within the shop." ² In the men's clothing industry, too, the written agreement is generally a brief and simple document. The typical agreement contains scarcely

¹ Paul H. Norgren, *The Swedish Collective Bargaining System*, p. 82, Harvard University Press, Cambridge, Mass., 1941.

² *How Collective Bargaining Works*, p. 644, Twentieth Century Fund, New York, 1942.

twenty-five hundred words. Dr. George W. Taylor, commenting on his experience as impartial chairman of the industry in the Philadelphia area has stated: ". . . I have not even seen the agreement of the employers with the Amalgamated Clothing Workers. Perhaps there is no such written agreement, for none is necessary. Collective bargaining is not concerned with technicalities but with a sound solution of every issue in a way that conserves the interests of both parties. That situation is probably the ultimate step in genuine collective bargaining. The confidence of the parties in each other is such that to them a written agreement does not seem to be essential."³ The steel workers' union prides itself upon its four-page standard contract and has "always looked upon the basic labor contracts as letters of introduction rather than agreements upon such matters as wages, hours and working conditions. In other words, the union was constantly seeking to broaden the scope of collective-bargaining relationships by requesting understandings that went beyond the language of the contracts, in order to secure more complete recognition and greater control over major wage and employment policies."⁴ Until quite recently, management in the steel industry, on the other hand, has considered the contract as fixing the bounds of collective bargaining and has generally refused to consult with the union regarding anything not covered in their agreements.

Many students of labor relations and many of those active in the field express preference for the administrative type of agreement. Slichter, for example, urges that "company labor policy should favor the administrative method of dealing with each case on its merits, rather than the legislative method of spelling out in advance detailed rules to govern decisions."⁵

³ George W. Taylor, "Experiences in Collective Bargaining," *Collective Bargaining and Cooperation, Bulletin No. 8*, p. 23, Bureau of Industrial Relations, University of Michigan, 1938.

⁴ *How Collective Bargaining Works*, pp. 549-550, Twentieth Century Fund, New York, 1942.

⁵ Sumner H. Slichter, "Economic Conditions and Collective Bargaining," *Collective Bargaining and Cooperation, Bulletin No. 8*, p. 4, University of Michigan, 1938.

An experienced labor relations executive in one firm expresses his preference for "a labor contract which sets up the broad framework within which people can make common-sense applications or adjustments of personnel policies and practices to meet the needs of the particular business. But to accomplish this requires full confidence in both parties to the contracts."⁶ In this same vein, the Director of Research of one union comments: "While a contract should adequately cover all major issues, it should not be overburdened with detail. It is well to limit its contents to the essentials."⁷

It should be noted that where the informal, administrative approach has been highly successful, this state of affairs has not been achieved overnight or without difficulty for both parties. On the contrary, most unions and employers in this country who now utilize the administrative type of agreement have lived through past periods of turbulence and strife in their collective bargaining.

This does not mean that the earlier years of collective bargaining in any given situation will invariably be characterized by strife and misunderstanding or that administrative agreements will invariably fail if negotiated at the outset of the bargaining relationship. It is possible that, if both parties conscientiously and sincerely apply themselves, they may be able to make a success of their venture from the start. However, it must be recognized that this is not what usually *does* happen at the time the first agreement is being negotiated for the simple reason that in most cases the parties are largely unknown quantities to one another and quite naturally will tend to be unwilling to take the risk of being caught with an unworkable administrative contract.

In view of the foregoing it would certainly seem to be the

⁶ Harold F. North, "How Can the Success of Personnel Management be Appraised?," *Addresses on Industrial Relations, Bulletin No. 16*, p. 122, University of Michigan, 1945.

⁷ Solomon Barkin, "Union Strategy in Negotiations," *Collective Bargaining Contracts*, p. 26, Bureau of National Affairs, Inc., Washington, D. C., 1941.

safer policy for the parties to negotiate the detailed, legislative type of contract in cases where harmonious relations have not been established. This is also applicable to succeeding agreements for as long a time as there is doubt as to the feasibility of the administrative approach.

It has already been stated that the basic collective-bargaining objective of the parties should be to develop a mutually satisfactory long-term relationship. At first glance recommending the legislative type of agreement may appear to be incompatible with that objective. Actually, at least in the early phases of the relationship of the parties, the contrary is probably most often true.

Although a legislative contract is more difficult and time-consuming to negotiate, the explicitness and clarity of its clauses should, under most circumstances, prevent numerous subsequent misunderstandings and grievances from arising. Irrespective of how troublesome it may be to hammer out an agreement on the intent and wording of any specific clause, it is far better to do so right at the bargaining table than to write a highly general clause which may result in an arbitration decision which one or both of the parties may find completely unsatisfactory.

As time goes on, if the parties are reasonable and develop confidence in one another, the rules of the game will no doubt be modified and amended and there will be a tendency to follow the basic intent and spirit rather than the strict letter of the agreement. Of course, someone has to take the first step, and in this respect management probably has more responsibility than the union. In order gradually to evolve an administrative type of relationship and to prevent the union from insisting on writing restrictive clauses into subsequent agreements, management should sincerely attempt, in so far as practicable, to live under the legislative agreement *in an administrative fashion*. This philosophy has been capably expressed by Slichter as follows: "Employers, including top management and foremen, help to keep agreements short and simple when they are careful not to chisel under the terms of collective agreements. Such at-

tempts cause unions to demand rules to protect their members against chiseling. Above all, the employer should not be legalistic or technical. If he says to the union: 'You have no rule covering this complaint, therefore we can't consider it,' the union will demand a rule to govern the case."⁸

THE SUBJECT-MATTER OF COLLECTIVE BARGAINING

Irrespective of whether the parties negotiate a legislative or administrative type of agreement they still have the problem of determining the subject-matter that is appropriate for collective bargaining.

Unfortunately, there is no clear-cut definition of the scope of bargaining, nor do unions and managements generally agree between themselves on the point. By and large the unions feel free to request employers to negotiate on virtually any subject which they deem significant to their interests.

Unions are understandably opportunistic in framing their bargaining demands, both as to quantitative extent and as to the topics involved. Their demands are the resultant of many forces, such as: (1) the financial health of the industry as a whole and of the specific firm in question; (2) the direction of the business cycle currently under way; (3) the scope of the previous or existing agreement, if any; (4) the demands of the employees; (5) the objectives of the national or international union; (6) the settlements made in neighboring plants or in the same industry; (7) the relative bargaining strength of the parties; and (8) the impetus given by various governmental agencies such as the National Labor Relations Board.

With the passage of time and the achievement of one set of demands, the union is apt to attempt to extend the subject matter of collective bargaining into other fields. Witness the current requests of the Musicians' Union and the United Mine

⁸ Sumner H. Slichter, "Economic Conditions and Collective Bargaining," *Collective Bargaining and Cooperation*, Bulletin No. 8, p. 4, University of Michigan, 1938.

Workers for a royalty on the finished product, as compared to yesteryear's comparatively simple wage requests.

Recognizing this, management generally, and rightly, has come to feel that it is the policy of most unions not only to demand more of the same things each year, such as higher wage rates, more generous vacations and shorter hours, but also to formulate new demands in areas heretofore not considered by either party to lie within the scope of collective bargaining. When one considers the current bargaining demands and objectives of some unions, such as the guaranteed annual wage, severance pay, paid sick-leave, and health- and sickness-benefit plans; it is obvious that these apprehensions are not unfounded. Undoubtedly the reluctance of most managements either initially to engage in collective bargaining or later to widen the scope of established bargaining is based in part on the practical consideration that they cannot predict the long-range outcome of ventures into new areas and therefore are fearful of the ultimate expense and damage involved. This viewpoint has been cogently expressed: "A basic reason for the reluctance of some employers to bargain collectively is the fear that, in the absence of legal definition or general agreement on the proper scope of collective bargaining, they may be forced to negotiate about matters that are necessarily the function and responsibility of management, thus impairing their power of decision and their effectiveness as business managers."⁹

THE SCOPE OF BARGAINING AS DEFINED BY LAW

The basic legal statement of the scope of bargaining is now found in Section 9 (a) of the Labor-Management Relations Act of 1947 which provides for collective bargaining "in respect to rates of pay, wages, hours of employment, or other conditions of employment." This is unchanged from the National Labor Relations Act. The responsibility for determining

⁹ *National Collective-Bargaining Policy*, p. 5, Industrial Relations Counselors, Inc., New York, 1945.

whether or not this definition covers any specific subject matter about which there is doubt resides with the Board. Its authority in this respect stems from Section 10 of the Act which empowers it to prevent the unfair labor practices specified in Section 8. One of the five unfair labor practices that can be committed by an employer (Section 8 (a) (5)) is "to refuse to bargain collectively with representatives of his employees, subject to the provisions of Section 9 (a)." Also one of the six unfair labor practices that can be committed by a labor organization (Section 8 (b) (3)) is "to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 9 (a)." Since the Board is given broad powers of discretion and investigation for the purpose of giving effect to the policies of the Act, it is evident that, within the limits of Section 9 (a), the legal scope of bargaining is whatever the Board determines it to be, subject only to the provisions in the balance of the Act and to the concurrence of the courts.

Even though the terms "rates of pay, wages, and hours of employment" are not defined *per se* in the Labor-Management Relations Act, nevertheless certain subject matters of collective bargaining are now delimited by the Act. The most important of these items are: the closed shop, the union shop, maintenance-of-membership clauses, check-off, union featherbedding demands, health and welfare plans, and handling of grievances.

Although the legal meaning of "rates of pay, wages, and hours of employment" tends to be broadened or otherwise altered from time to time by Board-orders and court-decisions,¹⁰ the terms themselves are nonetheless sufficiently descriptive to make the average employer feel that he is dealing with a reasonably well-defined range of subject matter. Admittedly, ambiguities may still be a problem as borderline issues are

¹⁰ Witness recent decisions by the NLRB in the cases of Inland Steel and W. W. Cross, requiring employers to bargain on pension plans and group health and accident insurance programs when requested to do so by unions representing their employees.

raised, but in spite of this management usually has little trouble in determining demands that are clearly *not* "rates," "wages," or "hours." Unfortunately this is not at all true in the case of the highly ambiguous phrase of Section 9 (a), "or other conditions of employment." Here considerable doubt and confusion are generated because, as with many catch-all provisions, the phrase provides no standards for the guidance of the parties. Because they have no specific legal criteria against which they may measure their contentions in doubtful cases, the parties may find it necessary in some cases to resort to the essentially negative procedure of taking their dispute before the Board, and, at a later stage, possibly before the courts.¹¹

It is true, as will be outlined in more detail shortly, that the above condition is not a serious problem where the parties are following the well-established bargaining-patterns of their industry or area or of the economy as a whole. The problems arise primarily when unions depart from the more or less standard collective-bargaining subject-matters either as a deliberate pioneering effort (witness the previously mentioned royalty demands of some unions), or as the result of grievances or of disputes over the interpretation or application of agreements. An interesting example of this latter type of situation is found in a case where the United Automobile Workers (CIO) demanded the discharge of a supervisor on the grounds that the issue was negotiable under the "other conditions of employment" phrase in Section 9 (a) of the National Labor Relations Act. The employer refused to entertain the demand and the case went to the Board which agreed with the union, stating:

The type of supervisor under whom an employee works is of direct concern to the employee and may be of vital importance to him. The conduct of a supervisor may affect an employee's well-being as much as low pay, long hours, or other unsatisfactory conditions of work. A dispute involving the discharge or demotion of

¹¹ It should be pointed out, however, that the parties will usually settle such issues around the bargaining table or will fight them out on the picket-line instead of taking them before the Board.

a supervisor objectionable to the employees is, we think, a dispute concerning a condition of employment.¹²

A decision such as this, illustrating as it does the former Board's tendency to be liberal in defining the subject matter of bargaining, is naturally of concern to management because, as the scope of bargaining is increased, the scope of managerial rights is certain to decrease.

If the findings of the Board and the courts in doubtful cases were more numerous and more general, their orders and decisions might possibly provide a yardstick to answer questions in novel cases. Unfortunately, such orders and decisions are neither sufficiently numerous nor broad enough to produce this result. Both the Board and the courts have considered each individual case in the light of the particular facts and circumstances involved. Although logical enough and usually fair, this procedure makes it difficult to apply general conclusions to other cases, even though they are quite similar. In view of this it is not surprising that, during the life of the National Labor Relations Act, the Board never published a listing of bargainable and non-bargainable issues. Although the Labor-Management Relations Act is more specific on a few points, it is probable that this general problem will continue.

Another factor that tends to complicate the problem even further—again largely for management—is that the thinking of the Board and the courts is not static. Admittedly, a willingness to modify interpretations and convictions in line with evolving social and economic concepts is a good thing. However, this virtue hardly helps to build up a stable and detailed definition of the legal subject-matter of collective bargaining.

THE SCOPE OF BARGAINING AS DEFINED BY PRACTICE

Obviously the wording of the Labor-Management Relations Act, decisions of the NLRB and the rulings of the courts, since

¹² Alladin Industries, Inc., and United Automobile Workers of America, CIO, 22 NLRB, No. 101.

they fail to cover a sufficiently wide range of cases, are not of too great assistance when it comes to deciding whether or not a specific union demand is negotiable. A better guide in a practical and positive sense is the subject-matter covered in existing and past contracts signed by the employer and union in question or the subject-matter generally contained in agreements in the industry or even in industry as a whole.

As far back as 1942 over 50,000 labor agreements were estimated to be in existence and the number has probably increased since then. In view of this it is not surprising to find that an amazing range of topics has been covered. "In fact, unions at one time or another, in one industry or another, have negotiated with employers on virtually every subject which customarily is embraced in that esoteric province, 'the sole prerogatives of management'." ¹³

Included among these are many relatively common subjects such as recognition, union-security, wage provisions, wage-incentives, vacations, hours of work, overtime pay, pay for Sundays and holidays, safety, leaves of absence, lay-off and re-employment, grievance-procedure, arbitration, and strikes and lock-outs. In addition, numerous other topics occur with varying degrees of frequency. These range from those that are truly bizarre and crop up in only one or two cases to others that are fairly common in specific industries but are rarely found elsewhere. Usually this latter type of clause is fought for by the union or unions involved to meet some special problem or condition characteristic of the industry. As an example, the International Fur and Leather Workers Union (CIO) frequently negotiates clauses that require the employer to post bond or cash as security for the faithful performance of the agreement. Such clauses are seldom, if ever, encountered in most other industries and they are obviously demanded because of some past unfortunate experiences in getting employers to comply with the terms of agreements.

¹³ Neil Chamberlain, "The Nature and Scope of Collective Bargaining," *The Quarterly Journal of Economics*, vol. 58, No. 3, pp. 362 and 363, May, 1944.

Another type of clause prevalent in a single industry, but arising out of different conditions, is found in coal-mining. In this industry employees often live in company towns and, as a consequence, the union has succeeded in securing provisions in contracts that cover the conditions of company-houses. In the ladies'-garment industry far more sweeping provisions are negotiated, apparently as the result of past difficulties. Here agreements with the union "specify the conditions under which an employer may reorganize his business, or enter into another partnership, or send materials to other firms for fabrication . . ." ¹⁴

Clauses such as those cited above are normally considered to be beyond the scope of bargaining in most industries and are consequently seldom encountered. On the other hand, there are enough industries and problems to allow for the possibility, over-all, of a large accumulation of unusual provisions. If to these are added the results of bargaining by naive or inept negotiators, an impressive total can certainly be expected.

Irrespective of the reasons for its acceptance, a subject-matter that has once been incorporated into a labor-agreement is likely to be exceedingly difficult to escape in the future. Unless the union's demand is *in the nature of an exaction for services which are not performed or not to be performed*, or is otherwise prohibited or delimited by the Labor-Management Relations Act, it is hard to see how the employer can refuse to negotiate on a formerly acceptable topic without running the risk of being found by the NLRB to have committed an unfair labor-practice. Likewise, if the majority, or even a substantial minority, of the firms in the industry can be shown to have included a given subject-matter in their collective-bargaining agreements, a union could probably successfully maintain that the topic was within the scope of bargaining for that industry. Certainly, subject to the provisions of the Labor-Management Relations Act, the pattern and precedents already established within the industry possess considerable force.

¹⁴ Frank C. Pierson, *Collective-Bargaining Systems*, p. 32, American Council on Public Affairs, Washington, D. C., 1942.

When specific topics are negotiated widely throughout the general economy, then, practically speaking, an individual employer is bound by the pattern so established. Thus, when the subject-matter included within the pattern expands, as it constantly tends to do, the employer finds it very difficult not to go along with the trend. This has been true both in this country and abroad. For example, in England, the accepted subject-matter of collective bargaining had expanded by 1934 until unions in all large basic industries were consulted regularly "in engaging new workers, in distributing work, in appointing foremen, in working on piece-rates or time-rates, in fixing starting-times and meal-times, and in introducing new machinery and processes."¹⁵ This was at a period when most unions in this country were still engaged in a struggle for survival and when many of these topics would have been inconceivable as part of the general pattern of bargaining. In Sweden both the unions' and employers' associations are relatively evenly matched in power, and both bargain in a realistic and businesslike fashion. Even so, with the passage of time the unions have forced approximately a third of the employers to include clauses in their agreements covering paid sick-leave and free medical care, in addition to the more usual clauses encountered in this country. In spite of its steady growth within the past few years, the scope of collective bargaining in America, with the exception of a few industries such as coal mining and the garment trades, is still not as wide as in Great Britain. However the trend to a broader range of topics continues.

The actions of the National War Labor Board during World War II, contributed greatly to this growth. One of the NWLB's most significant contributions was the fact that it spread throughout industry many relatively rare bargaining-practices. Numerous examples could be cited. The many maintenance-of-membership clauses ordered by the NWLB extended this type of union security into industries where it was relatively unknown. Moreover, in more than three hundred cases the Board

¹⁵ Ruth Weyand, "Majority Rule in Collective Bargaining," *Columbia Law Review*, vol. 45, No. 4, p. 592, July, 1945.

ordered joint negotiation by the parties in order to eliminate intra-plant inequities in the wage scale.

In effect, the NWLB brought about within a four-year period an extension of collective-bargaining practices that otherwise might well have taken a decade or more.

CONCLUSION

It is obvious that the scope of collective bargaining as defined by practice varies appreciably from industry to industry, and, within the same industry, from company to company. Moreover, because the subject-matter of bargaining is fluid and dynamic, shifting to meet specific needs and changing conditions, it is also apparent that a concrete, all-inclusive legal definition is quite unlikely to be made either by the NLRB or by Congress.

However, even if it were possible to set up a comprehensive legal definition of the scope of bargaining, there are many who believe that it would be unwise to do so. Typical of this viewpoint is the following statement:

It must be remembered that all through the years unionism, via collective bargaining, has been whittling away at management-sovereignty over hiring and firing, seniority, wage-scales, and related concerns. Attempts of unions to acquire control over the labor supply, or to revise employment rules, or to install grievance machinery, have been consistently resisted as menacing management prerogative. Yet business has survived, and even flourished, after these once-sensational reforms had lost their novelty and become a habit.¹⁶

The implication here appears basically to be that the scope of bargaining is not in actuality a problem—in the sense that management may be harmed—but that management, in its traditional labor-relations conservatism, has made it appear to be a problem by its fear of anything new and untried. It also seems

¹⁶ *Trends in Collective Bargaining*, p. 187, Twentieth Century Fund, New York, 1945.

to be implied that, if employers would stop their worrying about the scope of bargaining and negotiate on any subject matter the union chooses to bring up, the results would prove highly beneficial once the novelty wore off.

It must be admitted that there is some merit in such reasoning where the relationship between the parties is mature and stable and where neither the employer *nor the union* is motivated solely or largely by a one-sided desire to dominate and dictate. It must also be admitted that virtual partnerships between labor and management have sometimes been quite successful both in this country and elsewhere.

In spite of all this, however, if we take a coldly realistic view of the current status of labor relations in this country, the fact still remains that the vast majority of unions and managements are *not* in partnership and are *not* thinking of each others' welfare in the demands they make.¹⁷ In addition, a very substantial proportion of the bargaining relationships now in existence are of quite recent origin, thus having had little time in which to mature and stabilize.

In view of these facts, though it may not be ideally or theoretically desirable for management to continue to be concerned about the scope of bargaining, *it is very definitely a practical necessity under present conditions*. Therefore most concerns still face two prime hazards in dealing with requests to broaden the subject-matter of collective bargaining in the local situation: first, in order to be able to continue to manage efficiently, management must resist the tendency of some unions to seek to extend collective bargaining into areas such as the disciplining of supervision, or the determination of plant locations or of products to be made. And second, management cannot permit collective bargaining to extend to such a point or with such in-

¹⁷ This is an especially important consideration for management in those cases where the union is Communist-dominated or where the union local is under the control of dishonest or racketeering officers. Similarly, unions find managements which are obviously insincere, reluctant to bargain or actively seeking means to break the union. Given any of these conditions, it becomes purely academic to talk seriously of successful results from broadening the scope of bargaining.

novations as to affect adversely the concern's ability to earn a fair and normal profit. Some extension of the scope of bargaining is perhaps inevitable, but it should be controlled sufficiently to enable the necessary technological and human adjustments to be made. It would be unwise, indeed, to attempt by legislation or other means to force too great an extension too rapidly.

The following chapters analyze six major, and often most troublesome, subjects of collective bargaining. These are: (1) union security, (2) management security, (3) grievance procedure, (4) arbitration, (5) seniority, and (6) wages, fringe issues, and hours. If the parties can reach agreement on these six fundamental and basic topics, they will almost invariably be able to resolve issues on such relatively minor phases of their relationship as leaves of absence or the use of bulletin boards. For those interested in seeing how others have phrased clauses dealing with all such topics, and the extent of the commitments made, many excellent compilations of contract clauses have already been prepared.¹⁸ The following chapters will not attempt in any way to duplicate these compilations but instead will be devoted to an analysis and discussion of those topics which are typically the most important and most difficult to negotiate.

¹⁸ See: *Union Agreement Provisions*, Bulletin No. 686, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1942; *Collective-Bargaining Contracts*, Bureau of National Affairs, Washington, D. C., 1941; *Labor-Contract Clauses*, Automotive and Aviation Parts Manufacturers, Inc., Detroit, Mich., 1945; *Trends in Collective Bargaining and Union Contracts*, Studies in Personnel Policy No. 71, National Industrial Conference Board, New York, 1946; *Typical Labor Contract Provisions Prevailing in the Plastics Industry*, Society of the Plastics Industry, New York, 1944; *Classified Provisions of Collective-Bargaining Agreements in the Iron and Steel Industry*, American Iron and Steel Institute, New York, 1943; James J. Bambrick, Jr., *New Clauses in Labor Agreements*, American Management Association Personnel Series No. 20, pp. 171-181, New York, November, 1943; "Trends in Collective Bargaining," *Management Record*, National Industrial Conference Board, Inc., New York (a monthly series starting with September, 1943); *Incentive-Wage Plans and Collective Bargaining*, Bulletin No. 717, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1942; and Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, McGraw-Hill, New York, 1945.

VI

UNION SECURITY

MOST unions feel that, to remain strong and secure, they must have an adequate income and must be able to maintain their hold on their members. Both of these objectives can be achieved with a minimum of difficulty, if contractual provisions can legally be negotiated which require all employees in the bargaining-unit to be union members in good standing as a condition of employment. With the 100 percent membership afforded by a closed or union shop, a union is almost certain to be able to present a solid front to management in the event of strike or threat of strike.¹ In addition, the problem of income is effectively taken care of because

¹ The closed shop is now banned and other forms of union security are restricted in interstate commerce under the Labor-Management Relations Act. In addition, in many states, closed or union shop agreements are either banned outright or restricted in various ways. This is discussed in detail later in the chapter.

all members must pay their dues and other fees to the union or take the consequence of losing their jobs. Until qualified by law, the requirement that members must remain in good standing usually gave the union substantial control over the acts and words of the membership as well as over their contributions to the treasury. To mention only a few examples, a union under a unqualified "good standing" clause was often able to cause the dismissal of a worker for criticizing union officials or policies, for showing evidence of interest in a rival union, or for crossing the picket line of a friendly organization that was on strike.

Because of the powerful advantages arising out of compulsory 100 percent membership, the great majority of unions feel that they have not achieved maximum security until this goal has been attained. It is a virtual certainty that those unions which have, to date, been unable to win such concessions from employers will continue to strive for them, wherever legally possible. It is also certain that organized labor will fight for the elimination of all legal barriers in this regard. Apropos of this, it is interesting to compare our situation with that of England and Sweden. With respect to the United States, the Department of Labor comments: "The matter of union security is one of the most controversial and least understood issues in labor relations today."² In contrast, in Great Britain, due partly to a greater class consciousness and solidarity on the part of labor, closed shop³ agreements are exceptional and do not appear to be seriously sought for. A more recent expression of this same conclusion is the following statement by the head of the powerful British Transport and General Workers' Union: "The question of the closed shop is not an issue before the British trade union movement at this time."⁴ Likewise, union security is not

² U. S. Department of Labor, *The Foreman's Guide to Labor Relations*, Bulletin No. 66, p. 11, U. S. Government Printing Office, Washington, D. C., 1944.

³ As used here, the term "closed shop" is so broadly intended as to be practically synonymous with the term "union security."

⁴ British Information Services, "The Closed Shop," *Labor and Industry in Britain*, vol. 4, No. 10, p. 160, October, 1946.

a significant issue in Sweden, primarily "because of the very large proportion of workers who are union members and because the employers no longer try to break down union organization, preferring to deal with their workers through strong trade unions."⁵

The differences outlined above are probably more directly related to the basic attitudes of labor and management than to any other factors. With only a relatively few exceptions, really large scale unionism is still new and in process of evolution in this country. In many instances, as a consequence, the antagonisms and attitudes of mutual distrust that have often accompanied the spread of unionism have not had time to be dissipated. Fearful of the consequences of giving more power to already powerful labor organizations, managements have shown their distrust, in part, by fighting hard against the granting of strong contractual guarantees of union security. This, in turn, has tended to fortify labor's suspicions that management is often basically insincere, thus complicating the whole problem by making labor's leaders doubly anxious to negotiate strong security clauses. When to this type of emotional situation we add the fact that there is a good deal of confusion as to the precise meanings of such terms as closed shop and union shop, it is not hard to understand why discussions of union security so often seem to produce more heat than light.

MAJOR TYPES OF UNION-SECURITY PROVISIONS

In spite of much variation in detail, contractual clauses dealing with union security can be grouped into three major categories. These are:

1. The closed shop
2. The union shop
3. Maintenance of membership

Before proceeding to a discussion of these categories it should

⁵ U. S. Department of Labor, *Report of the Commission on Industrial Relations in Sweden*, p. 4, U. S. Government Printing Office, Washington, D. C., 1938.

be pointed out that the absence from a labor agreement of specific clauses dealing with union security does not necessarily imply that the union involved is weak or defenseless. In the first place, for years past, the many strong railroad unions have been forbidden by law to negotiate closed shop or "percentage" agreements.⁶ This prohibition was the result of Congressional action in 1934, amending the Railway Labor Act of 1926. Obviously, where union-security provisions in labor contracts are illegal, the absence of such provisions will have no meaning whatsoever as an index of the strength or weakness of the union or unions involved. In the second place, as in England and Sweden, though to a far smaller degree, some few American unions are so strongly established that there is no longer any incentive to spell out security clauses in contracts.

Finally, certification by the NLRB in itself provides certain concrete aids to security, for the Board's assistance may be secured in case of refusal to bargain or other unfair labor practices on the part of employers.⁷ Further, in case of raiding by other unions, the Labor-Management Relations Act also offers some security, since it provides, in part (Section 9 (c) (3)), that "no election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held." Obviously, this latter type of protection is neither complete nor of indefinite duration, but it can nonetheless be of considerable help, particularly to the new union which is just getting established.

THE CLOSED SHOP

In common usage, the term closed shop is often loosely applied to any arrangement whereby employees must join a union in order to work for their employer. It is unfortunate that this

⁶ "Percentage" agreements required a certain proportion of the total number of employees represented by the union involved to belong to the union.

⁷ These aids are available, however, only if the union involved has met the requirements of the Labor-Management Relations Act as to the filing of various data with the Secretary of Labor and the filing of "non-Communist" affidavits with the NLRB.

loose definition has evolved because it tends to cause confusion when the term is used in its strict meaning. For purposes of clarity, whenever closed shop is mentioned in the following pages, the technically correct meaning as given below, will be intended.

In the true closed shop all workers hired by an employer must, when hired, be union members and, to retain their jobs, they must remain union members in good standing. In actual practice, since an employer has no reliable way of contacting the union's members, he becomes dependent on the union to supply him with workers as he needs them. This literally puts the union in the position of being the management's employment agency.

As is true of any employment agency, there is the likelihood that, at times, the union may be unable to fill the employer's need for help. This problem is sometimes handled by setting a time limit within which positions must be filled, the employer thereafter being free to find non-union workers for the jobs. As might be expected, the length of time allowed varies greatly, some clauses merely specifying "within a reasonable time." Moreover, there are some contracts which, by failing to provide for the possibility that the union may be unable to find help, leave the management with no way of doing so itself in the event of such a contingency. Whether or not the absence of escape provisions will be harmful to any given company will, of course, depend on many factors, chief among these being the union's integrity and past record of performance, and the current state of the labor market. Where there is any doubt, however, as to the union's ability to supply help on demand, an employer should certainly strive to negotiate some protective arrangement, providing for the securing of non-union workers after a specified period.

The following closed-shop clause, taken from a recent labor agreement, illustrates a fairly typical plan for giving the union what it wants in the way of security while still providing management with some necessary hiring safeguards:

The Employer agrees to retain in its employ in its factory for actual production both male and female members of the union in good standing. . . .

The Employer agrees to call upon this Union for such acceptable additional help as it may require from time to time.

The Union agrees to provide such acceptable additional help within twenty-four (24) hours of receiving notification from the Employer. If such acceptable additional help cannot be supplied, the Union agrees to permit the Employer to hire such help in the open market. Such acceptable additional help shall be on a trial basis for two (2) weeks, then if retained, shall file application for membership in the Union.

The clause just cited specifies that workers referred by the union must be acceptable. The implication is that management's decision as to acceptability is binding. Some contracts, however, do not even mention this point, and the implication in such instances is that the employer must accept any worker referred by the union. Obviously, if the relationship between the parties is good, disputes over a worker's ability to do the job will probably be resolved without too much trouble. On the other hand, it is evident that where management lacks full confidence in the union's reasonableness, every effort should be made to clarify the conditions under which help referred by the union may be rejected by the employer.

Another key problem, from management's point of view, is posed by the latter half of the final sentence in the clause cited above. Here it is stated that non-union employees, if retained, "*shall file application for membership in the Union.*" The union is thus left entirely free to accept or reject any application. If the union should choose to exercise, in very many cases, its prerogative to reject, management might well find itself suffering unnecessary losses in money and efficiency due to excessive labor turnover. Once again, whether or not it is necessary to strive for restrictions on the union's power to reject the applications of non-members depends primarily on the nature of the relationship between the parties and the union's past perform-

ance. Certainly, if any employer has good reason to believe that a union will use the power granted to it under a closed shop agreement to deny membership (and, therefore, employment) to some workers because of their former membership in another union or because of their race, it is good policy to exert every effort to secure a "no discrimination" clause covering these topics. In this respect, the Supreme Court has sustained the NLRB in its enunciation of the basic principle that one of the duties of a bargaining agent is to refrain from discriminating unfairly against any of the employees in the unit for which it has exclusive bargaining rights.⁸

THE UNION SHOP

Whereas closed-shop agreements are typically sought by the craft unions such as those found in the printing and building trades and garment and women's clothing industry, the majority of the new industrial unions prefer the union shop. In the union shop the employer is free to hire whomever he pleases, but, at time of hiring or after a stated interval, the employee must join the union and remain a member in good standing in order to retain his job. The following clause, taken from a recent labor agreement, illustrates this type of arrangement:

All new employees hired shall become members of the Union within thirty (30) days of the date of their employment. It shall be a condition of employment that only members of the Union who remain in good standing in the Union shall remain in the employ of the Company.

The grace period in this clause is fairly typical. Although some contracts provide for none, an analysis by Slichter of 107 labor agreements containing union-shop provisions reveals that

⁸ *Wallace Corp. vs. NLRB*, 323 U. S. 248; *Steele vs. L. & N. R. Co.*, 323 U. S. 192; and *Tunstall vs. Brotherhood*, 323 U. S. 210. For summary, see: *Tenth Annual Report of the National Labor Relations Board*, p. 58, U. S. Government Printing Office, Washington, D. C., 1946.

sixty-nine of the agreements (sixty-four percent) allowed a grace period of from two weeks to one month. The range, overall, was from twenty-four hours to six months.⁹

Generally speaking, union-shop clauses are simpler than closed-shop agreements and are easier to administer. This applies to both the company and the union involved. However, two of the same problems that are of potential concern to management in the case of the closed shop crop up again. One of these is the dangerous vagueness of an unqualified requirement that employees remain in good standing. The other is the question of leaving unrestricted the union's right to refuse to accept new employees as members. It is probable that this latter point is more significant in theory than in practice where industrial unions are involved. This is so because, unlike the crafts, the industrial unions normally have very little incentive to restrict their membership.

MAINTENANCE OF MEMBERSHIP

Under a maintenance-of-membership agreement no employee is required to join the union but all those who are members on a given date and all who join thereafter must *continue* their membership in good standing to retain employment. Although such clauses have been found in labor agreements for the past twenty years they were not extensively used until World War II. In August 1942 the National War Labor Board directed a maintenance-of-membership¹⁰ clause which with some modification was subsequently ordered by the Board in several hundred cases. In part, this clause is as follows:

All employees who, fifteen (15) days after the date of the National War Labor Board's directive order in this matter, are

⁹ Sumner H. Slichter, *Union Policies and Industrial Management*, pp. 62 and 63, Brookings Institution, Washington, D. C., 1941.

¹⁰ Norma-Hoffman Bearings Company, Case 120, August 24, 1942, cited in *Summary of Decisions of the National War Labor Board*, vol. I, p. 23, U. S. Government Printing Office, 1943.

members of the union in good standing in accordance with the constitution and bylaws of the union, and all employees who thereafter become members, shall, as a condition of employment, remain members of the union in good standing for the duration of this contract.

Obviously this clause is a compromise between management's basic desire for no form of union security and the desire of most unions for the closed or union shop. Because of labor's "no strike" pledge made at the beginning of the War, maintenance of membership clauses were ordered by the board to give the unions some protection against loss of membership.

As the result of the activities of the Board, organized labor has extended this form of union security widely, carrying it into many organizations where formerly it had been impossible for the union to secure more than mere recognition.

EXTENT OF UNION SECURITY

The extent to which union-security provisions have permeated labor agreements in this country, varies greatly from industry to industry. In some industries such as printing and publishing, coal mining, women's clothing, and construction, the closed or union shop is so widespread as to be, for all practical purposes, no longer an issue. Some few unions such as the molders, on the other hand, do not even seek security clauses, while elsewhere, as in steel and most other heavy industries, the issue is still bitterly contested.

A general summary of the extent of union security in a variety of industries is provided in Figure 2.,¹¹ which shows clearly the much greater progress that has been made by organized labor in the manufacturing industries as compared to non-manufacturing. Expressed in tabular form, the distribution of workers

¹¹ U. S. Department of Labor, Bureau of Labor Statistics, "Extent of Collective Bargaining and Union Recognition, 1946," *Monthly Labor Review*, vol. 64, No. 5, p. 768, May, 1947.

BARGAINING WITH ORGANIZED LABOR**MANUFACTURING INDUSTRIES**

Closed or union shop with preferential hiring	Union shop	Maintenance of membership	Preferential hiring	Sole bargaining
Baking. Breweries. Canning and preserving foods. Clothing, men's. Clothing, women's. Dyeing and finishing textiles. Gloves, leather. Glass containers. Hosiery. Printing and publishing. Shoes, cut stock and findings.	Carpets and rugs, wool. Flat glass. Knit goods. Paper and allied products. Sugar, beet. Woolen and worsted textiles.	Aircraft and parts. Cigarettes and tobacco. Chemicals. Cotton textiles. Electrical machinery. Machinery, except electrical. Meat packing. Nonferrous metals. Petroleum refining. Rubber. Steel, basic.	Pottery.	Cement. Sugar, cane.

NON-MANUFACTURING INDUSTRIES

Construction. Trucking and warehousing.	Coal mining.	Crude petroleum and natural gas. Metal mining. Public utilities, electric light and power, water and gas. Telegraph.	Longshoring. Maritime.	Railroads. Telephone.

FIGURE 2. INDUSTRIES WITH FIFTY PERCENT OR MORE OF THE WORKERS UNDER AGREEMENT COVERED BY SPECIFIED TYPES OF SECURITY CLAUSES.

under union agreements by type of union security was as follows at the end of the year 1946:

<i>Type of Union Security</i>	<i>Percentage of Workers Under Union Agreements</i>
Closed Shop	33
Union Shop	17
Maintenance of Membership	25
Preferential Hiring	3
Other	22

EMOTIONAL AND LEGAL ASPECTS OF THE UNION-SECURITY ISSUE

The passage of the Labor-Management Relations Act has greatly affected the whole question of union security by introducing a series of legal considerations which, under the National Labor Relations Act, simply did not exist. These, coupled with the many strong emotional considerations that have always played a dominant role in the negotiation of union-security

provisions, have tended to complicate the whole matter to a hitherto unprecedented degree. There is no doubt that the intense feeling of numerous groups and individuals has finally resulted in legislation which has removed the union-security issue from free collective bargaining in many cases. Likewise the intensity of feeling of other groups and individuals will lead them to ceaseless efforts to remove all legislative bars to the free negotiation of this issue.

The following sections of this chapter are devoted to the various emotional and practical aspects of the union-security problem, as well as the somewhat complicated legal considerations that are involved.

THE UNION'S VIEWPOINT ON SECURITY

As has already been pointed out, the acme of security in the thinking of most of organized labor is the achievement of a closed or a union shop. That this is not merely an idle hope on labor's part is attested by the statistics previously cited, which show that forty-five percent of all wage earners operating under collective-bargaining agreements were covered by such provisions. This means that well over six million workers were already employed under closed or union shop agreements. However, this picture has been and will undoubtedly be greatly affected in the future by the impact of the Labor-Management Relations Act and numerous recently enacted state laws.

In the eyes of labor, there are several eminently practical reasons for widespread insistence on the ultimate achievement of closed and union shop provisions. These may be recapitulated under four major headings:

1. The closed or union shop offers the quickest, easiest, and cheapest means of getting minority groups of employees to become dues-paying members, controlled by the union. In concerns where the union does not have a suitable security clause in the labor agreement, constant organizational activity must be conducted to sign up new em-

ployees as members, to maintain the interest of old employees, and to collect the funds necessary to support the union's treasury. This aspect of union security has been commented on by two former labor leaders as follows: "A union in a given bargaining unit cannot exist either peacefully or indefinitely with part of the working force union and part non-union. Over the long run either the union will attain 100 percent membership or become completely ineffectual."¹²

2. Unions still feel that most employers are anti-union and are only waiting for the day when they can get rid of the union. Although the existence of the Labor-Management Relations Act and various state labor enactments makes this less of a problem, most unions still retain their fundamental fear of punitive action by employers and consequently strive for security clauses to protect themselves.
3. A closed or union shop contract effectively bars much of the jurisdictional raiding of rival unions. Workers found guilty of dual unionism face the almost certain prospect of suspension or expulsion from the incumbent union and this in many instances means loss of employment and income. In recent years the aggressive rival organizing campaigns of the AFL and the CIO have made this a factor of even greater significance than it was a decade ago.
4. The closed or union shop gives the union as much control over the employees as the employer has, since the employee must remain a union member in good standing to retain employment. In support of their demands for such security, unions commonly claim that this enables them to be truly responsible because they are given sufficient power to force all employees to live up to the terms of the agreement. Likewise it is frequently asserted that under a closed or union shop agreement union officers and

¹² Clinton S. Golden and Harold J. Ruttenberg, *The Dynamics of Industrial Democracy*, p. 191, Harper, New York, 1942.

officials are largely freed of the necessity of continuing organizational activities among employees and of pushing unjustified grievances to maintain employee interest in the union, thus making it possible for the union to cooperate and work more closely with management for their mutual long term advantage.

However, the basic point involved here is the union's desire to be able to control the employees effectively. Although in many cases such control has been to the mutual advantage of all concerned after it has been secured, it has in other cases been used for the personal advantage of the union officials. Basically and primarily, unions want control over employees, to be able to enforce working-rules that are not in the agreement, to maintain internal organizational discipline and to be able to act in a concerted fashion as a group if resort to economic sanctions seems desirable.

There is another consideration that helps to account for the strong preference of most craft unions for the closed shop, in contrast with the union-shop leanings of most industrial unions. This is the problem of regulating entrance to the craft or trade. A prime objective of many craft unions in seeking and maintaining closed-shop agreements is to prevent non-union workers from "stealing the trade" and jeopardizing the union scale by working at lower rates. The degree of success attained by a craft union in restricting the number of qualified journeymen and thereby maintaining high wage scales will necessarily be in almost direct proportion to the degree of coverage achieved by the union as a result of its organizing efforts. Obviously there is little or no incentive of the foregoing type in the case of unions in mass-production industries such as steel, automobile or electrical-products manufacturing. In the first place, industrial unions typically cut across the craft lines in such industries and also include large numbers of unskilled and semi-skilled workers. This fact, in itself, indicates that under such conditions there

is no point in trying to raise or maintain high wage scales by restrictions on admission of skilled journeymen. Furthermore, the closed shop, with its obligation to provide union help to the employer, offers little but trouble to the industrial union because of the large numbers of workers required by mass-production industries.

THE EMPLOYER AND THE UNION-SECURITY ISSUE

A few managements feel as does an official of the Kewanee Mfg. Co., who states: "If we should move to another city and start a new manufacturing enterprise, we'd insist on having a strong union, a closed shop, and check-off."¹³

Similarly, other employers have found that "their labor relations improved when operating under closed and union shops. They discover that instead of having less discretion, management is freer to act, because it is easier to get along with a strong labor organization than with a weak, suspicious union which questions almost every managerial rule. Another union-shop advantage frequently cited is a harmonious work force unvexed by feeling between union and non-union employees; also considerable freedom from jurisdictional disputes. And in industries where competition has been particularly keen, a regional or nation-wide closed or union shop has helped to stabilize wages and remove labor costs as competitive factors."¹⁴

In other cases, when strengthened with the closed or union shop, the union has been able to take necessary action and survive, even though such action was highly unpopular with the rank and file of employees. An excellent illustration is found in the full-fashioned hosiery industry. By 1929 the wages of knitters at machines had reached a high point of \$150.00 a week. With the onslaught of the depression it was recognized

¹³ "Tough Union Becomes Management's Best Partner," p. 70, *Modern Industry*, vol. 10, No. 6, December 15, 1945.

¹⁴ *Trends in Collective Bargaining*, p. 44, Twentieth Century Fund, New York, 1945.

by both employers and top union officials that wages had to be reduced if the industry was to remain in existence. Between 1929 and 1933 wage reductions of from fifty to sixty percent took place. The union was able to survive only because the employers granted the closed shop and check-off.¹⁵

Although, as indicated above, some managements find it advantageous to operate under closed or union shop agreements, many others—probably an appreciable majority—are strongly opposed to granting either of these forms of security. The fundamental reasons for such opposition are as follows:

1. Many managements state that the closed or union shop is un-American since the employee is forced to be or to become a member of a given organization (the union) before he can secure or retain employment. This, and the virtually identical argument that the closed or union shop interferes with the personal liberties granted under the Constitution, has been presented by the Chamber of Commerce of the United States as follows: "The closed shop or any equivalent thereof is un-American and monopolistic and interferes with the individual freedom granted to all our people under the Constitution of the United States. Any man should be able to work lawfully when, where and how he pleases; and any man, company or corporation should be able to hire anyone to work in a lawful pursuit. This should be so whether the individual belongs or does not belong to any lawful union. . . . If the people as a whole permit any group to define or limit the scope of action or the rights of any other group of American citizens, in a different way than their rights are established by law then we will cease to be a free people. The right to work is equally sacred with the right to quit or strike."¹⁶ Many management officials, individual employees and ordinary citizens wholeheartedly and sin-

¹⁵ George W. Taylor, "Channels of Dealing with Workers," *Trade Union Agreements, Part II, American Management Association Personnel Series*, No. 27, p. 33, New York, 1937.

¹⁶ See: *New York Times*, p. 12, August 14, 1941.

cerely subscribe to the foregoing. In answering this point, union leaders usually observe that in a democracy it is often necessary for the majority to coerce a minority for the over-all good of the greatest number.

2. Many managements have less emotional but more immediately pressing reasons for opposing the granting of the closed or union shop in their own individual cases. As the result of experience these managements have found that granting union security does *not* automatically make the union act in a more responsible fashion and does *not* result in peace and brotherly love throughout the plant. An outstanding illustration of this point is furnished by the Ford Motor Company, which in 1941 agreed to grant both the union shop and check-off of dues, but nevertheless suffered 773 unauthorized work stoppages in the following four years. Irrespective of the presence or absence of union-security provisions, the quality, integrity, and social viewpoints of union leadership are obviously important factors in determining how responsible the union will be.
3. In some cases the employer opposes the granting of the closed or union shop because the union or local is new and untried or bursting with what is often termed "communistic zeal." Under such circumstances, the employer is naturally loath to strengthen the union until he can judge how its policies will develop and what type of individuals will assume leadership.
4. In other cases the employer feels that a weak union is the best union and cannot see how a strong union can be anything but a more vigorous opponent, more capable of driving a harder bargain for the employees.¹⁷

Basically, when the situation is stripped of its emotional fluff, those employers who oppose the granting of union-security

¹⁷J. C. Cameron, "Union Security Plan," *Personnel Journal*, vol. 24, No. 5, p. 179, November, 1945.

clauses do so because they recognize that such clauses immeasurably strengthen the union and they are convinced that the union would only use its increased power to wring further concessions from management. In the minds of most such managements the situation appears to be analogous to being accosted by a footpad with a stick in his hand and thereupon handing him a gun.

From all of the foregoing discussion, it is obvious that the granting of the closed or union shop has long been a most controversial issue.

Admittedly, it has proved advantageous to both management and the union in some situations. For example: "Charges of irresponsibility are rarely heard in connection with the Allied Printing Trades, the Amalgamated Clothing Workers of America or the International Ladies' Garment Workers' Union. These closed-shop unions are almost excessively conscious of their obligations. Their records speak eloquently of the cooperation that has developed between the employers and the unions for the benefit of each and the improvement of the industry."¹⁸

However, it is also clear that the economic and social aims of the union and the personal aspirations of its leaders, as well as the past history of the relationship between the parties should all be carefully weighed before management agrees to include a union-security clause in the labor agreement even where this is legally possible. In any event, it is unwise, as a general rule, for management to make any such concession until the parties have worked together for a few years and their relationship has evolved into one of mutual respect and trust. *A wise management will not give such a clause to a union as a gift and hope for something in return, but instead, through realistic and forceful bargaining, will secure, in exchange, concessions of real importance to the welfare of the concern.*

Under suitable conditions, and with proper attitudes on both sides, the granting of union-security provisions can result in

¹⁸ Jerome L. Toner, *The Closed Shop*, p. 158, American Council on Public Affairs, Washington, D. C., 1944.

much improved industrial and labor relations and be of great mutual advantage. However, under other circumstances, as previously outlined, such concessions can result in the effective hamstringing of management. The unions cannot lose, and can only gain by receiving such security clauses. Management, in turn, may gain but also may lose appreciably and therefore should objectively consider all the circumstances involved in the specific case before making its decision.

THE EMPLOYEE AND UNION SECURITY

Since a union certified as the bargaining agent for a given bargaining unit represents *all* the employees in the unit, most unionists argue that all employees in the unit should be members. This, they argue, is only reasonable since all the workers benefit by whatever improved wages, hours, or working conditions the union can secure from the employer. One former union leader expresses this point as follows: "All the workers are bound by the union-employer contract. The wage increases, shorter hours, and other benefits secured by the majority are enjoyed likewise by the minority. The union has to pay hall rent, postage, grievance committeemen for lost time, and other expenses. To meet these obligations every member must pay the taxes (union dues) levied by and for the support of the union. All the workers derive equal benefits from the union, and therefore they must all share equally in paying the cost of its upkeep. Every plant, like every city, has that recalcitrant minority that has to be compelled to meet its obligations."¹⁹ Typically, unionists class those who refuse to join as free riders, and are bitter in their denunciations of these employees.

On the other hand, many workers are sincerely opposed to unions, and refuse to join voluntarily. Undoubtedly every social institution is opposed by some minority group. In some cases such opposition is probably the result of emotion and prejudice.

¹⁹ Clinton S. Golden, "Labor's Point of View," *Personnel Journal*, vol. 18, No. 3, p. 89, September, 1939.

In other cases, however, the opposition of employees to joining a union is based on their own previous unsatisfactory experiences or those of their relatives or friends.

There is no doubt that the closed or union shop, forcing the employee to remain in unqualified good standing in the union to retain employment, has been seriously abused by unscrupulous union leaders on many occasions. For instance: "There have been employers who were not above buying the complacency of union officers toward schemes for exploiting their employees, and there have been union officers not above selling out the workers they represented."²⁰

"Here and there employees have been expelled from a union and lost their jobs because their production exceeded established union ceilings or for other actions that did not warrant such harsh penalties."²¹ In other instances tyrannical union leaders have made a mockery of the union members' claim to a democratic way of life. In one case an employee stated that the union was no good. As a result he was fined \$75 which he refused to pay and consequently lost his job.²² Another case "involved a member of the Boilermakers' Union, a Mr. Cornelius Cardno, out on the Pacific Coast. Mr. Cardno was caught talking in favor of a welders' union. Thereupon the President of the Boilermakers' Union sent a letter to the Coast expelling Mr. Cardno from the Boilermakers' Union and, under a closed-shop contract, the shipyard company had to fire Mr. Cardno from his job."²³ In still another instance a group of employees were discharged under a closed-shop contract before they even became union members. "An employer in the business of rectifying liquors had eleven employees. Not liking their working

²⁰ "The Closed Shop," *Studies in Personnel Policy*, No. 12, p. 5, National Industrial Conference Board, New York, March, 1939.

²¹ *National Collective-Bargaining Policy*, Industrial Relations Counselors, Inc., p. 20, New York, 1945.

²² *Toward A National Labor Policy*, American Management Association Personnel Series No. 72, p. 39, New York, 1943.

²³ William Hard, "A National Labor Policy: Why Needed and What it Should Be," *Signposts of Industrial Relations*, American Management Association Personnel Series No. 54, p. 25, New York, 1942.

conditions, they went over to the Distillery Workers' Union and signed cards of application for membership. The business agent, equipped with these application cards, went to the employer and said: 'I am the bargaining representative of your employees.' He thereupon persuaded the employer (who was conniving with him, as a matter of fact) to give him a closed-shop contract. Now, mind you, these men had not yet joined the union; they had only signed application cards. And at the next meeting of the union their applications were rejected. Thereupon the business agent went back to the employer and said: 'You signed a closed-shop agreement with me. Now I will send you over some real union guys, and you will employ them.'"²⁴

In addition to the possible evils of the "good standing" clause many employees have complained of high union initiation fees, dues, and assessments and a complete lack of accounting for funds. The following excerpts from letters to a national magazine from shop employees highlight this:

The men in our company have to pay the union's local five percent of every cent they make, plus \$4-a-month dues. The queer thing is that the men can't tell you how the union got the authority to levy the five percent assessment. I have never seen one member that wanted to pay it, but they can't vote it out. Keep my name out of this, as I am a union employee.

The union posted a notice here that all employees must pay an initiation fee of \$52, plus dues, or quit. Not many men are willing to pay that amount for a frozen salary of 62 cents an hour.

I work in a Northwest shipyard, and I say emphatically that we do not have democracy. Union fees and dues are intolerably high, yet you must join the union. No one knows where the money goes. The books are unavailable.

I am told I belong to a union and that dues are deducted from my weekly pay check. I could not help noticing some discrepancy, and drew my boss' attention to it, saying it didn't tally and I would like to know how much the union is taking out. "Take a tip from

²⁴ *Ibid.*, p. 21.

me, and don't squawk," he advised, "or you'll be off the job before next Saturday, and you won't get another job in these plants."²⁵

Besides the foregoing types of union abuses which primarily affect employees, the general public is also hurt by some union practices. "Approximately twenty-five unions do not give employees equal rights of representation regardless of race, creed, or color."²⁶ Other unions are "closed unions" and refuse to take in new members, thus enabling them, through the economics of scarcity, to receive an unusually high rate of wages. "The interest of the community requires that union membership be open to all and that the closed shop shall not be permitted to create a class of privileged workers who, as a group, control jobs to which other workers have no access, however willing they may be to join the union. In the long run the interest of the unions themselves requires that the closed shop shall not be linked with closed unions or that it shall not interfere with the employer's freedom to hire men willing to join, because only on these conditions can the community afford to permit free trade unions."²⁷

THE LABOR-MANAGEMENT RELATIONS ACT AND THE UNION-SECURITY ISSUE

The explosive union-security issue was discussed above from the point of view of the attitudes and desires of unions, employees, and employers. It is obvious that sharply divergent opinions are encountered among the members of each of these three groups.

However, the passage of the Labor-Management Relations Act in 1947, and the enactment in the past few years of numerous state laws bearing on the union-security question have re-

²⁵ From letters voluntarily written to the *Reader's Digest* in June, 1943 when the magazine offered prizes for the best letters from employees on "What's Wrong with Management?"

²⁶ *National Collective-Bargaining Policy*, p. 20, Industrial Relations Counselors, Inc., New York, 1945.

²⁷ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 96, The Brookings Institution, Washington, D. C., 1941.

sulted in legal considerations that are of the utmost importance to the parties, in most cases, in their negotiations.

All employers engaged in interstate commerce are covered by the Labor-Management Relations Act of 1947. This law contains certain restrictions concerning the negotiation of union-security clauses. These restrictions are discussed below:

1. Labor agreements, containing any type of union-security clause, entered into prior to June 23, 1947 (the date of the passage of the Labor-Management Relations Act), that were valid under the old NLRA are apparently still valid under the new law for the period of their duration. However, if the agreement is re-opened or modified during its lifetime it is possible that the NLRB will consider the union-security proviso to be no longer effective. Also the employer must consider the labor laws of the state involved since under the terms of the LMRA, if such state laws have more stringent provisions affecting the union-security issue, such provisions are applicable.²⁸
2. Labor agreements, containing any type of union-security clause, signed during the first sixty days subsequent to the enactment of the new law, covering a period of not more than one year, were permitted to run their course if they complied with the old NLRA. However, such agreements could not be renewed or extended, and could not run counter to the terms of any state legislation.
3. Sixty days after the enactment of the LMRA closed shop contracts were prohibited and could not be negotiated by the parties. Although banned by the law, the closed shop will probably continue to exist in practice. The law does not prohibit an employer from notifying a union when he has job openings available. In the building trades and in the garment industry, for example, the employer will be forced, in many geographic areas, to hire only union mem-

²⁸ See: Sections 8 (a) (3), 14 (b), and 102, Labor-Management Relations Act of 1947

bers since no other persons of the requisite skill and experience are available.

Sixty days after the enactment of the law newly negotiated union-shop and maintenance-of-membership clauses were legal only if not prohibited by any appropriate state law and only after the following requirements of the Labor-Management Relations Act were met:

- A. The union wishing to negotiate such clauses must first of all be the legal bargaining representative of the employees involved, and secondly must file with the National Labor Relations Board a petition signed by thirty percent or more of the employees in the bargaining unit stating that the employees desire the union to negotiate a union-security clause.
- B. Before the National Labor Relations Board can act on the union's petition the union local and the international union (if any) with which the local is affiliated must have filed with the Secretary of Labor copies of its constitution and bylaws and a report (covering both the local and the international) showing:
 - “(1) the name of such labor organization and the address of its principal place of business;
 - “(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded \$5000 and the amount of the compensation and allowances paid to each officer or agent during such year;
 - “(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;
 - “(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

- “(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;
 - “(6) a detailed statement of, or reference to provisions of its constitution and bylaws, showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor.”
- C. In addition such local and international union must have filed with the Secretary of Labor a report showing all of “(a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made” and also the union must have “furnished to all of the members . . . copies of the financial report required . . . to be filed with the Secretary of Labor.”
- D. Furthermore, the NLRB cannot proceed with the union’s petition until, in addition to all of the foregoing, the union involved has filed “with the Board an affidavit executed . . . by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is not a member of or supports any organization that believes in or teaches the over-

throw of the United States Government by force or by any illegal or unconstitutional methods.”²⁹

- E. When the mass of data outlined above has been furnished to the official agencies designated, then and only then, is the Board free to conduct an election among the employees in the bargaining unit to determine whether or not they want a union-security clause (union shop or maintenance of membership) in their labor agreement. If a *majority* of the employees in the unit vote in favor of such a proposal, then the union is free to proceed to raise the issue as a bargaining demand with management. However, the employer does not have to grant the union's request if he does not want to. Nevertheless, if the union cannot gain its demand across the bargaining table it is perfectly free to resort to strike action to gain the request.
- F. The law also sets forth certain requirements as to the type of union-shop or maintenance-of-membership clause that may be negotiated and the manner in which such clauses can operate in practice. First of all the contract must allow new employees thirty days in which to become union members under a union-shop clause and the clause cannot be applied retroactively to old employees. In addition, the employer can now discharge employees under a union-security clause only by reason of the employee's failure “to tender the periodic dues and the initiation fees . . .” The union can fine an employee not in good standing for other reasons and expell the employee from the union, but the employer may not discharge the employee as the result of this alone. Also, if a charge of unfair labor practice is made, the Board is required to determine whether or not the initiation or membership fee charged by the union is “excessive or discriminatory

²⁹ See: Sections 9 (e) (1), 9 (e) (2), 9 (e) (3), 9 (f) (A), 9 (f) (B), 9 (g), and 9 (h) of the Labor-Management Relations Act of 1947.

under all the circumstances." The law also puts a further obligation on the employer by providing "that no employer shall justify any discrimination against an employee for non-membership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Thus, if a union has a legal union-security clause in a labor agreement the employer must discharge (in the case of union shop clauses) employees who are not members of the union within thirty days of the effective date of the agreement or the date of the employee's hire, whichever is later. However, in cases of such discharge the employer has the obligation to refuse to discharge any such employee if he has reason to believe that "such membership was not available to the employee on the same terms and conditions generally applicable to other members." This will almost make it a necessity for the employer to secure a copy of the union's constitution and bylaws, and will make it essential that all employees about to be discharged for non-membership (after thirty days) be given a thorough hearing and have their cases carefully investigated and reviewed for the protection of the employer.

After an employee is accepted by the union as a union member he can be expelled from the union, but as long as he continues to pay "the periodic dues and the initiation fees" required of union members he can not be discharged by the employer because of his lack of good standing in the union. Should he fail to pay

"the periodic dues and the initiation fees" he must be discharged by the employer, provided however that if the employer has reasonable grounds for believing that the employee's discharge is requested for reason other than his monetary delinquency the employer shall not discharge him. Again, this will require complete and careful investigation and hearings in each such discharge case to protect the employer. Inevitably the above provisions of the law will prove a source of discontent and harassment to employers and unions. Numerous Board and court cases will probably be required to define such terms as "reasonable grounds," "excessive or discriminatory membership fees," and "same terms and conditions generally applicable to other members."³⁰

STATE LEGISLATION AFFECTING THE UNION-SECURITY ISSUE

In the past few years many laws have been passed in various states either limiting or prohibiting union-security clauses in labor agreements. Some of these laws are far more stringent than the comparable provisions of the Labor-Management Relations Act and some are milder. As previously mentioned, those state laws that go beyond the requirements of the LMRA on this issue are applicable to employers engaged in interstate commerce in the state concerned.

In three states the law regulates the conditions under which the closed shop is legal. Thus, under the Colorado Peace Act, a closed-shop agreement is prohibited unless voted for by three-fourths or more of the employees in a collective bargaining unit by secret ballot in a referendum conducted by the State Industrial Commission. The commission is also authorized to terminate such an agreement if it finds that the labor organization

³⁰ See: Sections 8 (a) (3), 8 (b) (2), and 8 (b) (5) of the Labor-Management Relations Act of 1947.

has refused unreasonably to receive any employee as a member.

The Kansas Union Regulatory Act and the Wisconsin Employment Peace Act also regulate closed-shop contracts. In Kansas such a contract is permitted by a majority vote of employees in a collective-bargaining unit, and in Wisconsin by a vote of two-thirds of the voting employees.

In Maine a law prohibits the closed shop but permits union-shop agreements. In eleven other states laws were enacted this last year prohibiting the closed shop or any other type of union-security agreements. These states are Arizona, Arkansas, Delaware, Georgia, Iowa, North Carolina, North Dakota,³¹ South Dakota, Tennessee, Texas, and Virginia.

In addition a law was passed in 1943 in Alabama declaring that every person shall be free to join or refrain from joining a labor organization. Also, in New Mexico a bill proposing a constitutional amendment to prohibit the closed shop was passed in 1947 and will be submitted to the people at the next election.

THE CHECK-OFF

The check-off can be described as the deduction of certain sums of money by the employer from the wages of the employee and the transfer of these sums to the union. Sometimes such deductions involve only union dues, although the employer may also deduct initiation fees and fines or assessments, depending upon the wording of the contract.

Prior to the passage of the Labor-Management Relations Act, three basic types of check-off clauses were commonly encountered and were legal in interstate commerce:

1. Automatic and irrevocable—automatically applying to all union members or all employees covered by the agreement. Individual employees were not asked to authorize

³¹ In North Dakota the law is in abeyance, pending a referendum to be held at the 1948 general election.

the deductions and could not withdraw, except by resignation from the service of the employer.

2. Voluntary and irrevocable—applicable only when the employee granted his authorization (usually in writing). However, the employee was then covered by the check-off clause for the duration of the agreement and could not withdraw, except by resigning.
3. Voluntary and revocable—applicable only when the employee granted his authorization. Thereafter, the employee could withdraw whenever he chose.

Examples of these three types are as follows:

1. "The Companies, during the life of this Agreement for employee-Union members, shall deduct from the first pay of each month the Union dues of \$1.00 per month and initiation fees of \$2.00 and promptly remit the same to the respective locals of the Union."
2. "The Company shall deduct from the wages of those employees who are members of the Union and who individually certify in writing that they authorize such deductions the initiation fees and/or dues and such sums so deducted shall be turned over to the office designated by the Union. Such authorization, when given by an individual member, shall remain in force for the duration of this agreement."
3. "The Company agrees to make monthly payroll deductions for Union dues of one dollar (\$1.00) per month upon proper written authorization by the employee who is a Union member. . . . It is understood that any authorization for such payroll deduction shall be voluntary on the part of the employee and shall be subject to cancellation at any time upon written notice to the Company by the Union or by the individual employee."

Like other forms of union security, the check-off is very rarely encountered in Sweden and Great Britain. However, in this

country, as of the end of 1946, six million workers, or forty-one percent of all employees working under labor agreements were covered by some form of check-off. Although it is sometimes found alone, it exists more typically in conjunction with some other form of union security, such as maintenance of membership.

Not all employers are opposed to the check-off and not all unions want it. Their principal arguments pro and con are summarized below.

ARGUMENTS IN FAVOR OF THE CHECK-OFF

The principal reason some unions want the check-off is that it is the simplest and easiest method of maintaining a strong and liquid union treasury. Moreover, when the check-off is in effect shop stewards or business agents do not have to spend many valuable hours hunting up employees in order to collect dues. In the words of one labor organization, "unions with a large membership insist on the check-off system as the most economical, accurate, and dependable method of collecting dues."³² As a corollary, it is also often claimed that stewards and union officers can devote more of their time and energy to improving employer-employee relations.

Some employers favor the check-off, particularly where the closed, or union shop, or maintenance of membership has already been granted, on the grounds that the arrangement tends to reduce substantially the number of employees who must be discharged for failure to maintain good standing. Such discharges are expensive when the cost of hiring and training replacements is considered and they also have the disadvantage that they tend to make some employee groups resentful of management.

There are other employers who favor the check-off, whether or not the labor agreement provides for any other type of union security, on the grounds that the check-off avoids the confusion

³² *Bread and Roses, the Story of the Rise of the Shirtworkers*, Amalgamated Clothing Workers of America, p. 57, New York.

and lost working time which occur when a steward or business agent collects dues from each individual member in or about the plant. Although many labor agreements provide that union dues shall not be collected during working hours, such clauses are often honored more in the breach than in the observance, sometimes with the tacit or express permission of supervisors anxious to be "good fellows." In at least one industry "several concerns have protested withdrawal by the union of the check-off privilege on the ground that alternate systems of collecting dues inevitably interfere with efficient plant operation."³³

ARGUMENTS AGAINST THE CHECK-OFF

The principal reason some unions do *not* seek the check-off is the fear that under this arrangement the officers and stewards of the union will lose contact with the rank and file, and ultimately lose control of the local. Evidence that this fear is not groundless is contained in the following comment of one pro-labor writer: "In certain unions new members have little contact . . . and feel that this practice (check-off) is a type of racketeering."³⁴ Another labor publication concludes: "Some workers object to the system on the ground that it makes union officers independent of the members' pleasure or displeasure."³⁵

The majority of employers are frankly opposed to the check-off. One frequent objection is that it imposes on the employer the clerical expense of collecting dues which should rightfully be borne by the union. To obviate this objection a few labor agreements provide that the employer may retain a percentage of the money collected as reimbursement for the clerical expense. One labor agreement, for example, stipulates that the company shall remit deductions to the union, "less two percent,

³³ *How Collective Bargaining Works*, p. 454, Twentieth Century Fund, Inc., New York, 1942.

³⁴ Alfred Baker Lewis, *What Your Union Means*, p. 13, American Labor Education Service, New York, 1941.

³⁵ *Bread and Roses, the Story of the Rise of the Shirtworkers*, p. 57, Amalgamated Clothing Workers of America, New York.

to be retained by the company to cover clerical handling expenses." Another permits the company to keep five percent.

Another reason for opposing the check-off is the sincere feeling of some employers that it is unfair to minority employee groups. This is similar to the contention that the union or closed shop is undemocratic in that it deprives certain employees of their freedom of action. Although this is possibly true in the case of automatic check-off, it is difficult to sustain the argument where the union's request is for voluntary or revocable check-off.

The principal objection of employers to the check-off appears to stem not from a fear of discriminating against minority groups of employees, nor from the expense of collecting dues, but from a basic reluctance to do anything which might strengthen the union and make it a more powerful antagonist. This is a familiar objection since it has already been encountered in connection with other forms of union security. As was previously pointed out, such an attitude is common and understandable until the parties have had the opportunity to work together and develop mutual respect and confidence.

Check-off provisions should not be granted by management in a first agreement, if it can avoid it. Furthermore, if the union turns out to be irresponsible and led by racketeers or radical theorists, an employer would indeed be foolish to grant check-off or any type of security at any time, unless forced to do so. On the other hand, if the union is well led, reasonable and responsible, it may well be that the best interests of both parties will be served by the granting of this rather mild form of security.

THE LABOR-MANAGEMENT RELATIONS ACT AND THE CHECK-OFF ISSUE

The Labor-Management Relations Act also contains provisions affecting check-off provisions in labor agreements. The act permits the parties to negotiate a contract clause requiring that money be deducted from the wages of employees and turned over to the union "in payment of *membership dues* in a

labor organization.”³⁶ The term dues is not defined in the Act but apparently means dues and assessments, and initiation fees.

The law further provides that the employer may only “check-off” money from an employee’s pay after he has received from the employee “a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.”

³⁶ See: Section 302, Labor-Management Relations Act of 1947 (*italics added*).

.VI

MANAGEMENT SECURITY

JUST as unions strive for security in their dealings with employers, so must management provide for security in its dealings with organized labor. To management, security is uninterrupted production and freedom to perform the necessary managerial functions unhampered.

Both labor and management have their own proper spheres of activity. "Of course, there are and will be disagreements about the *limits* of such proper spheres of activity but a management which is alert to the dangers of certain contract provisions need not be a hostile or anti-labor management. Management would be derelict in its duty—to owners and to workers—if it failed to try to solve these conflicts and problems."¹

Labor's proper sphere of activity does not include the run-

¹ Malcolm W. Welty, Editor, *Labor-Contract Clauses*, p. xiii, Automotive and Aviation Parts Manufacturers, Detroit, Michigan, 1945.

ning of the business and some labor leaders have made statements to this effect. For example, Philip Murray has stated: "The unions are on record in numerous instances as recognizing that in the last analysis management has to manage, if any concern is to be a success financially or in any other way."²

Unfortunately, however, many unions and union leaders appear either to have rejected this philosophy outright or to be rendering it the merest lip service. In resisting one company's demand for a "functions of management" clause, one union's vice president made the following comment before the War Labor Board: "We think that the company has overemphasized the importance of management functions. About all they are supposed to do is keep the books."³ Another union is reported to have stated "that occasion might arise where it might be necessary for it to consider whether the company is 'paying the president too much money'—whether the directors 'who aren't doing anything might be getting too much money'—whether 'the engineers ought to be sweeping the shop up instead of designing their products'—whether 'the managerial personnel has gone to seed'."⁴

Every executive knows that if he were to sign the contract proposal first submitted by the union in negotiations, management would in most cases lose control of the enterprise. Although some unions apparently consider this a desirable objective, many serious observers feel that any such development would ultimately result in a lower scale of living for all of us.

Responsible unionists are aware of these hazards. At the President's Labor-Management Conference, in November 1945, the report of the labor committee on management's right to

² Philip Murray and Morris J. Cooke, *Organized Labor and Production*, p. 84, Harper, New York, 1940.

³ George Hodge, *Management Principles in Collective Bargaining*, American Management Association Personnel Series No. 95, p. 4, New York, 1945.

⁴ Taken from page 4 of the statement made by the General Motors Corp. in Washington on December 28, 1945 before the Fact-Finding Board in the General Motors-UAW-CIO dispute.

manage said, in part: "The functions and responsibilities of management must be preserved if business and industry is to be efficient, progressive, and provide more good jobs."

In those instances where truculent unions or union leaders have been able to hamstring management, the result has been chaos, confusion, inefficiency, higher costs, and lower production. As an example, war production at the Brewster Aeronautical plant was seriously disrupted in 1942 as the result of a complete breakdown of discipline. The labor agreement contained the following clause: "Before any employee is disciplined or discharged there shall be a hearing and mutual agreement between the shop committee and a representative or representatives of the management. The decision, *if mutually agreed upon* shall be final and binding upon both parties." Since the union did not agree in most discipline and discharge cases the result was chaos.

In France, during the years just before the war, the unions so weakened management through labor-dominated collective bargaining and restrictive legislation sponsored by labor, that the nation's powers of production were almost destroyed. This is dramatically presented by a French journalist writing under the pen name of Pertinax. Among other things, he states: ". . . Some clauses inserted in the standard collective contracts to which both parties had to conform seriously cut down the management's freedom of action in order to protect militant union men from being fired by way of reprisal. . . . The average workman's hourly output went down ten percent. Industrial output remained at approximately the same low ebb. . . . In vain did the orders come in; the factories were in no position to fill them. . . . The owners thought it too risky to increase personnel, having no assurance of being able to lay them off at will if business began to lag. The interference of shop stewards in management's business and, above all, the arbitration methods required by the Law of March 4, 1938, regarding the settlement of industrial disputes, the participation in all collective bargaining negotiations of the CGT, with its irresistible powers of intimidation—all this made the owners feel they

were no longer masters in their own factories. . . . Whenever they discharged a workman they had to give proof that his union activities, even if tinged with Communism, played no part therein. Many of them just gave up.”⁵

Since many (but by no means all) of the attempts to usurp management functions appear to come from leftist or Communist-dominated unions or locals, it is interesting to examine briefly the Russian experience with this problem. After several decades of the “great experiment,” the managers in the U.S.S.R. sound like labor’s caricatures of the “typical” factory manager in this country. Edgar Snow tells of an interview with the manager of a famous Russian plant, in which Snow asked if labor unions had a voice in the direction of the concern. Said the manager: “We don’t have such a system here any more. We find it neither necessary nor desirable. The workers do their jobs and I do mine . . . *they don’t interfere with management in any way.*”⁶ Further evidence of the Russian viewpoint is contained in an official publication of the Soviet Union which states: “Each plant has a leader, the manager, vested with full power to make decisions and hence fully responsible for everything.”⁷ Another observer states: “In one respect managements are freer in Russia than here. They have no interference from trade unions. The trade unions in Russia are much like the company union on this continent if you will think of Russia’s industry as under one great company and Stalin and his commissars as a great board of directors.”⁸

Obviously the manager must manage. A liner can have only one captain. Two generals can not successfully lead the same troops in the same campaign. In the final analysis, management can best maintain its functions and freedom of action not

⁵ *The Gravediggers of France*, pp. 367-369, Doubleday, Doran, New York, 1944.

⁶ Edgar Snow, *People on Our Side*, p. 145, Random House, New York, 1944, (*italics added*).

⁷ “The Russians Can Manage,” *Fortune*, vol. 30, No. 1, p. 161, January, 1945.

⁸ Dr. Boris Stanfield, “Enterprise in Soviet Russia,” *Economic Record*, vol. 7, No. 1, p. 53, January, 1945, National Industrial Conference Board.

through legislation, but through astute, ethical collective bargaining and sound industrial relations at the local-plant level. "Just as the union has a right to seek union security, so management has every right to provide for management security in the contract which is the basis of industrial relations in the plant. It is management's duty to make such demands on the union as are necessary to preserve its ability to perform its functions. Collective bargaining is by no means a one-way street."⁹

POINTS OF ATTACK

Fundamentally, management's security is imperiled by the following three basic union tactics, each of which will be discussed in turn:

1. Various restrictions on managerial action which are negotiated into the labor agreement.
2. Union "make-work" or "featherbedding" rules and union resistance to technological change.
3. Strikes or work interruptions during the life of the agreement.

NEGOTIATED RESTRICTIONS

Unions at one time or another have been able to negotiate clauses in labor agreements dealing with almost all types of management problems. For the most part, however, the attention of organized labor has understandably been directed toward those managerial functions or techniques which have a direct bearing upon the employees such as lay-offs, transfers, promotions, discipline, and time study.

Few, if any, managements would agree to give up their right to these functions or techniques, and few unions would waste time in directly asking them to do so. However, "union negotiators have . . . developed four flanking maneuvers that have

⁹ George W. Taylor, *The Function of Collective Bargaining*, American Management Association Personnel Series No. 81, p. 8, New York, 1944.

met with a considerable degree of success. This success is due to the fact that these four methods of approach appear on the surface to be reasonable, and the danger to management has not been perceived until too late. Some managements have unwisely traded such encroachments on their functions in exchange for denial of a wage raise, only to find that they have increased immediate profits at the cost of permanent loss of control of the business. The four flanking maneuvers may be termed (1) mutual-consent clauses; (2) joint committees of labor and management; (3) determination of promotions, etc., by seniority rather than managerial discretion; and (4) unlimited arbitration.”¹⁰

MUTUAL-CONSENT CLAUSES

Many contracts contain clauses which state that certain decisions shall be made or actions taken only with the mutual consent of the parties. Perhaps the union negotiators are nice fellows and the union conservative and ably led. Perhaps management's negotiators are certain that the union will be reasonable as specific cases arise. Against such a background it may appear to be quite sensible to agree to mutual consent. The danger—and it is a grave one—is that unions can and do change as national and local conditions change. Likewise, union officials come and go as the result of resignation, failure to be re-elected, or routine transfers from one area to another.

Any management agreeing to a mutual consent clause should clearly understand that in effect the type of action covered by the clause can be performed by management *only if the union agrees*. Such veto power can be disastrous. “One such clause cost a company several thousand dollars because the arbitrator brought into the case found (a) the company and the union had not agreed upon the discharge of the employee (union president) and therefore (b) the man had remained an employee of

¹⁰ Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, p. 61, McGraw-Hill, New York, 1945.

the company and was entitled to his wages from the time he was excluded from the plant until the arbitrator upheld the rightfulness of the discharge.”¹¹

Hill and Hook have rightly called the mutual-consent clause a bargaining booby trap. Regardless of the social or economic views the individual employer holds, the following facts must be kept in mind when the union proposes such clauses. First, “mutual-agreement clauses set up areas of joint authority which may invite friction, delay, compromise and inefficiency; second, they are apt to hamstring management in operating the plant, because management loses the power to make decisions; third, they throw more decisions to arbitration.”¹²

JOINT COMMITTEES

Joint labor-management committees are not new, either in this country or abroad. In England the trend has been for some time toward joint production committees, and during World War II the national unions signed agreements incorporating them in their contracts with the large metal manufacturing firms.

In France “joint consultation” has become a part of the law. “The decree of July, 1945, which provided for the establishment of joint committees, was recently amended to provide that management must ‘consult’ (instead of ‘inform,’ as previously) the labor organization on all proposed operating plans or changes in same; amendments also provided that the workers receive company financial reports before stockholders and that labor shall have a voice in the distribution of profits through the appointment of two labor representatives to the company’s board of directors.”¹³

¹¹ Malcolm W. Welty, Editor, *Labor-Contract Clauses*, p. xv, Automotive and Aviation Parts Manufacturers, Detroit, Mich., 1945.

¹² Stephen F. Dunn, *Desirable Terms in Collective Agreements, Address on Industrial Relations*, Bureau of Industrial Relations Bulletin No. 16, p. 109, University of Michigan Press, Ann Arbor, 1945.

¹³ George Romney, from a release of the Automobile Manufacturers

In this country joint labor-management committees are of two types: (1) those that operate outside the framework of the collective-bargaining agreement and are advisory in nature, or are established to explain or sell management policies or procedures to employees; and (2) those that are established within the framework of the agreement and consequently (unless the agreement specifically so provides) are not advisory in nature, but rather are empowered to make managerial decisions. Neither type of joint committee is prescribed by law in this country, although some unions appear to feel that this would not be undesirable.¹⁴

During the past three decades, joint labor-management committees have been inaugurated, outside of the terms of the labor agreement, on certain railroad systems, in the meat-packing industry, and in the garment industry. During World War II over 5000 such joint labor-management committees were established under the auspices of the War Production Board, in plants ranging in size from less than 100 to over 40,000 employees. The most successful of such committees stayed out of the realm of collective bargaining and grievance handling and confined themselves to activities where the individual employee could actually make a contribution, such as in scrap reduction drives, share-the-ride plans, or the submission of suggestions concerning practical shop operating methods.

This type of committee is primarily useful as a device to explain and sell management policies or techniques to the union and the employees. Job evaluation and time study, both of which intimately affect the employees and therefore are of concern to the union, have in some cases proved amenable to explanation and selling by the joint committee technique. Some-

Association, dated May 6, 1946, covering the Metal Trades Committee of the International Labor Organization.

For an extended discussion of organized labor's participation in management in the various European countries, see: *Monthly Labor Review*, vol. 63, No. 5, pp. 692-705, Bureau of Labor Statistics, U. S. Department of Labor, November, 1946.

¹⁴ See: *The United Automobile Worker*, January 15, 1942, a publication of the UAW-CIO.

times, too, employee complaints that do not fall under the grievance procedure of the labor agreement can be cleared up by a joint committee established for a specific project and of a limited duration. In one such case, employee complaints concerning the company cafeteria were overcome by appointing a labor-management committee for the sole purpose of visiting other industrial cafeterias in the area and comparing the prices, quality of food, and size of portions with the home cafeteria. As a result, the four employee members of the committee (who had been the worst complainers) appeared before their fellow workers at the next union meeting and convinced the great majority that the company's cafeteria was operated satisfactorily.

Committees of this sort, properly conceived and handled, can be important and desirable in industrial relations. However, they are not what the unions usually have in mind when they propose a joint committee to management. What they want is a type of committee that can make managerial decisions and they want this spelled out in the labor agreement. In actual practice, at one time or another, such committees have been created and empowered to make decisions relating to: job evaluation, time study, review of hourly rates of individual employees to determine merit increases, development of working rules and regulations, disciplinary action, production standards, apprenticeship and apprentice standards, administration of employee benefits, changes in shift schedules, and work sharing.

As might be expected, such joint labor-management committees, once in existence, are often regretted by management but are not easily dislodged in future bargaining sessions. The predominant reaction of employers is that these committees are merely another union device for vetoing management's decisions, and consequently are as restrictive and undesirable as the mutual-consent contract clause. Furthermore, as Hill and Hook have pointed out, some types of joint committees with managerial prerogatives have tended to discriminate against certain employees or groups of employees. An example is the following

union report on a joint union-management rate review committee's work.

"A wage review is like a court trial in which you and your record are the defendants, and the shop committee is your lawyer. The findings in your case are brought back by the jury which consists of three men from the Union and three from the Company. If these six men cannot agree as to the amount of hourly increase you are entitled to, then the judges in the form of a master wage committee take the case and return their verdict strictly according to its merit. If this final decision is not acceptable to the Union member concerned, then it may be protested through the regular grievance procedure and a more favorable decision requested. All of the foregoing are Union-Company proceedings. What happens to the non-union man's case as it goes through the hurdles? It takes a helluva beating as well it should, and gets dumped every time we get a poke at it before running it out on the scrap pile."¹⁵

As has already been suggested, union-management joint committees that are established to serve in an *advisory* capacity or for the purpose of selling the committee members on the advantages of a given course of action, or those that are set up for informative purposes such as to explain a new procedure, are entirely different from those that have been established to make decisions which management must follow. Even if the decisions of such committees were sound, which they frequently are not because of the limited experience, education, or technical information of many of the members, the committee device is an extremely cumbersome way to reach administrative decisions. In addition, however, when union or plant politics enter the picture the results are frequently disastrous.

SENIORITY

In addition to the negotiation of mutual-consent clauses and the use of joint committees, unions frequently attempt to negoti-

¹⁵ Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, pp. 69-70, McGraw-Hill, New York, 1945.

ate seniority clauses which will limit management's range of decisions. Often union negotiators will request that job assignments, job or shift transfers, promotions, or wage increases be based solely on seniority. When management agrees to such clauses it has lost, to a very real extent, its ability to manage and direct the working force efficiently.

This topic is discussed in some detail in Chapter X.

ARBITRATION

The negotiation of "unlimited arbitration" clauses is the fourth flanking maneuver of the unions to restrict managerial decisions. Under this type of contract clause any matter in dispute between the parties may be taken to arbitration. Obviously, by agreeing to such a clause, management transfers to a third party its authority to make decisions. Indeed, under some contracts the arbitrator may even be able to change the terms of the agreement that was negotiated by the parties.

As in the case of seniority, this topic is treated in detail in a separate chapter (Chapter IX).

UNION FEATHERBEDDING AND RESISTANCE TO TECHNOLOGICAL CHANGES

Slowdowns, featherbedding or make-work rules, and resistance to technological changes are all devices which tend to decrease production and raise unit costs. Thus, management's security is imperiled because the resulting higher costs usually mean a loss of profits or of markets. Unfortunately, these tactics are widely encountered in certain industries.

The railroad brotherhoods, the musicians, longshoremen, stage hands, and some building-trades unions, as well as some locals of the electrical workers' union are notorious in this respect. Various restrictions are in effect to spread employment among more men, to make jobs last longer (as in the case of seasonal or irregular work) or merely to provide a more comfortable work pace. These restrictions commonly exist either as

long-standing customs or as formal union rules. Usually they are not a part of the collective bargaining agreement, although they have the same force and effect as if they were.

For example, unions may require that work performed elsewhere be redone by their members. "A local of the Brotherhood of Electrical Workers had established closed-shop agreements with electrical manufacturers and distributors in the City of New York and had established featherbedding rules so that substantially every piece of electrical equipment brought into the City of New York had to be disassembled and reassembled within the city by members of the union."¹⁶ A similar example is found in the printing trades where under union "law" advertising plates and advertising matter which has been set in outside shops may be used in newspaper composing rooms only after a duplicate of it has been set up in the newspaper plant—and discarded.

Another phase of the same problem is the union demand that unnecessary men be hired. "Conspicuous examples of this type are the 'full crew' requirements in railroad contracts. Teamsters in New York have exacted the hiring of an extra 'pilot driver' on over-the-road trucks at the city boundary. In New York and Chicago drivers have interfered with store sale of milk. In nearly every city amateur musicians may not play in public unless an equal number of union members are hired or paid. Recently the musicians' union announced a ban against the broadcast of music originating in all foreign countries except Canada, and the local unions determine a minimum quota of musicians for each public entertainment where even a single bar of music is played. In Chicago there is a requirement that professional musicians be hired to put on and take off records played over any public loudspeaker. In a majority of its agreements the pressmen's union has a clause establishing minimum-crew requirements which vary from place to place somewhat in ratio to the bargaining power of the union. It is a matter of common

¹⁶ Lee H. Hill, *Developing a National Labor Policy*, American Management Association Personnel Series No. 88, p. 9, New York, 1945.

knowledge that there have been rigid manning rules in the theater and in the bakeries." ¹⁷

The Labor-Management Relations Act attempts to curtail these abuses. Section 8 (b) (6) of the act makes it an unfair labor practice for labor organizations "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value in the nature of an exaction for services which are not performed or not to be performed." Although it has been suggested by some that this wording will prevent management from paying for rest periods, vacations, etc., it would appear that the phrase "in the nature of an exaction" would pretty well limit the application to union demands that the employer retain on his payroll more employees than he considers necessary.

On the West Coast, management has in the past complained of a slow-down by the longshoremen's union. The President of the San Francisco Waterfront Employers' Association has stated: "Cargo handling on the Pacific Coast has doubled in cost during the past six years; work done per man per hour is little more than half what it was; mechanical equipment, far from advancing, has decreased. The entire cargo-handling system in Pacific Coast ports has slid steadily backwards. It now takes in San Francisco, the worst port, five men to do the work of three; in Southern California three men to do the work of two; in Portland and Seattle five men to do the work of four." ¹⁸

Union rules which restrict or prevent the introduction of improved equipment or less costly operating methods or materials are of great concern to employers in many industries. The AFL building-trades unions are notorious in this respect. "New York bricklayers will not allow mortar to be delivered or spread in bulk; it must be spread by a trowel. The Boston plasterers' tenderers' agreement sets the size of the hod and forbids loading mortar boards on wheelbarrows. Many painters' locals pro-

¹⁷ Robert M. C. Littler, "Managers Must Manage," *Harvard Business Review*, vol. 24, No. 3, p. 368, Spring Number, 1946.

¹⁸ Frank P. Foisie, *Seven Years—Foresight vs. Hindsight*, p. 211, Stanford Industrial Relations Conference, March, 1941.

hibit paint sprays. Other locals allow them for certain paints or types of work but demand higher pay for their use, which raises costs and cuts part of what the spray method saves. Philadelphia granite cutters proscribe the pneumatic hand harnesses with a tool of over one inch. New York steamfitters require radiator branches and coil connections to be cut and threaded on the job. The New York plasterers' agreement calls for the same on-the-job placement of all permanent plane moldings. Milwaukee carpenters require that mortising for locks, butting on hinges, and installation of all hardware shall be done on the job. Many glaziers' locals do not allow glass to be installed in the shop."¹⁹

There are also restrictions upon the use of prefabricated products. "In the building trades this seems to be the rule, not the exception. . . . The installation of preassembled bathroom fixtures has been prevented at least in the New York and San Francisco areas. In New York, Pittsburgh, and Oklahoma City rules have existed against the use of wall board and hollow tile. In 1941 the Federal Government itself was prevented from accepting the bid of the Currier Lumber Company to erect prefabricated houses."²⁰

In other instances unions have established, by custom or decree, absolute limits upon the amount of work to be performed in a given period of time. One observer cites the case of "a provision in the bylaws of the Ships Calkers' Union on the Pacific Coast which prohibits a ship's calker from doing more than 150 linear feet of calking in one day, at the risk of a fine or suspension from the union. The deadly effect of such a restraint upon production, with its resulting increase in cost, is shown by the fact that two calkers actually did eight times the amount of work which the union designated as a unit of measurement in one day. . . ." ²¹ It is a well-known fact to many employers

¹⁹ *How Collective Bargaining Works*, pp. 214-215, Twentieth Century Fund, New York, 1942.

²⁰ Robert M. C. Littler, "Managers Must Manage," *Harvard Business Review*, vol. 24, No. 3, p. 367, Spring Number, 1946.

²¹ Almon E. Roth, *Toward a National Labor Policy*, American Management Association Personnel Series No. 72, p. 6, New York, 1943.

who have had experience as shop workers that it is not uncommon for employees, even in unorganized plants, to establish among themselves a quota of daily work and not to exceed this quota. Particularly is this true under wage incentive plans based on piece work.

In spite of the foregoing instances of restriction of output by employees and unions, the majority of labor's leaders have expressed themselves, in the abstract, as being opposed to such practices.

President William Green of the AFL has said that the American labor movement "welcomes the machine." President Philip Murray of the CIO has declared himself as wholeheartedly in favor of every known device that will speed up production and give more production. However, he also indicated that no employee should be laid off as the result of the introduction of such devices. Van A. Bittner of the CIO has stated: "I say to you again that as far as I am concerned I have always been against the introduction of any methods that would curtail the output of any worker. My union, the United Steelworkers of America, has followed that policy. If some enthusiastic individual or local union should attempt to put featherbedding rules into effect, it would not be long until we would cure the trouble, if the matter were called to our attention by management." ²²

In spite of these obviously sound and apparently sincere expressions by many labor leaders, on the whole, the labor movement has not convinced any large portion of management of its eagerness for technological advance. This is certainly understandable in view of the wide gulf separating the practices of the rank and file and the statements of top union leaders.

CAUSES OF RESTRICTION OF OUTPUT AND RESISTANCE TO TECHNOLOGICAL CHANGE

Although restriction of output imperils management's security in many industries by raising costs and reducing markets or

²² Van A. Bittner, *As Labor Sees It*, American Management Association Personnel Series No. 72, p. 13, New York, 1943.

profits, no informed person can lay the blame solely on organized labor. Restriction of output is typically encountered among unorganized workers just as it is among those who are organized. Furthermore, long before unions were effective as organizations, and indeed since the dawn of the industrial revolution, workers have restricted their output and resisted the introduction of labor-saving machinery. As an example, eighteenth-century silk weavers in Lyons smashed their new looms, and both the owners and the drivers on the early turnpikes fought against the canals and then with the canalmen against the railroads.

Likewise, some industries and some managements practice the same type of restrictions. The protective tariff is a restrictive device, "indirectly limiting a nation's output, at least in the short run and perhaps always in the long run, but tariffs are eagerly sought by groups of manufacturers and by farmers."²³ Similarly, a federal law helps bottle manufacturers by prohibiting the sale or refilling of empty liquor bottles. Even the Government has limited production, as when farmers have been paid not to produce certain crops. And certainly the buying up of new inventions to keep them out of use, while it may be profitable for one concern, is another way of reducing production.

Apparently the motivations behind restriction of output and resistance to technological change are common to more groups than just organized labor.

Upon analysis, employees appear to be motivated primarily by three forces in their resistance to technological change and their tendency to restrict output. These forces are:

1. Broad economic or social theories which seem to their advocates to justify this course of action;
2. Feelings of insecurity;
3. Feelings of suspicion and distrust, often based on unsatisfactory personal experiences.

²³ H. A. Millis and R. E. Montgomery, *Organized Labor*, p. 461, McGraw-Hill, New York, 1945.

As an example of economic justification, one labor writer states: "There is strong evidence that advancing technology tends to cause a net decrease in employment because of ability of machines to produce more goods with fewer workers. . . . Solution of the machine age unemployment problem will come surely when industry joins with labor in taking the realistic view that machines displace more workers than they employ."²⁴ Obviously persons holding such warped economic viewpoints are not going to welcome the introduction of new labor-saving devices.

Likewise, many employees subscribe to the so-called "lump of work" economic theory—namely that only so much work is available over-all and that if each worker slows down, more people will have to be hired and unemployment will disappear. Generally speaking, this type of theoretical approach is unsound and erroneous. However, in specific local instances it may well prove true, at least temporarily. When this happens the worker is little concerned with the broad economics involved but is interested primarily in his immediate practical problem.

Feelings of personal insecurity also play their part. The average shop worker in many industries is plagued by the fear that he will be laid off at almost any time due to lack of work. Having experienced this in the past, he understandably expects that it will recur. In view of this, it is not surprising to find that, as they grope for a solution to their problem, there should be a tendency among employees to slow down and stretch the available work.

In other cases suspicious or angry employees slow down because they are convinced, rightly or wrongly, that they are being forced to work too hard. In this connection it certainly must be admitted that, where they have occurred, managerial abuses of time study have given some workers justification for restricting their output to avoid speed-up. While one of the authors was working in a factory some years back, his piece rate was

²⁴ R. A. Seelig, "Invention + Technology = Less Jobs," *Machinists' Monthly Journal*, pp. 334-335, November 1945, Washington, D. C.

cut three times in as many months because management felt he was making too much money. In no instance, however, was the product itself or the method of doing the job changed. Such abuses of wage incentives force employees to work at a constantly increasing pace in order to receive the same amount of money. It is small wonder that when this happens the worker seeks to protect himself by restricting his output.

Management must manage better, if it is to overcome these union and worker attitudes to restriction of output and resistance to technological changes. Some executives and supervisors will have to learn that indifference to their employees' welfare, the use of the speed-up, and the periodic mass lay-offs that characterize some industries and concerns do not produce sound industrial relations. Likewise, however, employees and unions will have to learn that their best hope of achieving both security and higher income lies in cooperating with management in producing more goods at lower costs. Labor would get more by making and dividing a bigger pie rather than by grabbing for a bigger slice.

"MANAGEMENT-FUNCTIONS" CLAUSES

Management's best defense against union encroachments on managerial functions or against union tactics that restrict output and raise costs is to be found in astute, aggressive, and ethical collective bargaining. There are two problems here. The first, which has already been discussed, is to *exclude* clauses that are unduly restrictive or costly. The second is to include a properly constructed definition, expressed in positive terms, of the functions (i.e., the rights) of management.

An example of such a clause recently negotiated by one of the authors with an international union is as follows:

The management of the Company and the direction of its working forces, including the right to hire, transfer, promote, demote, discipline, establish reasonable rules of conduct, or discharge for cause, to increase or decrease the working force as necessary, or to make work assignments is vested solely in the Company, pro-

vided that this will not be used for purposes of discrimination against any member of the Union, and subject to the terms and conditions of this Agreement.

In addition, the products to be manufactured, the location of plants, the schedule of production, the methods, processes, and means of manufacturing are solely and exclusively the functions of the Company.

Furthermore, it is understood and agreed that any of the rights, powers, or authority the Company had prior to the signing of this Agreement are retained by the Company, except those specifically abridged or modified by this Agreement and any supplementary agreements that may hereafter be made.

Another clause achieving the same purpose is: "It is mutually understood and agreed that the management of the work and the direction of the working forces, including, *but not limited to*, the rights of hiring, suspending, discharging for proper cause, promoting, transferring, relieving employees from duty because of lack of work, or for other legitimate reasons, are vested in the Company, subject to the provisions of this agreement."

The management-functions issue does not seem to be as intense abroad as it is in the United States. In some countries, such as France and Czechoslovakia, management has had many of its rights diluted by law or decree. In Great Britain both labor and management have understood and respected each other's functions for the last two decades. In Sweden the unions and the employer associations reached agreement on the issue in 1906 and have had little trouble on this point since. A management-functions clause taken from a typical Swedish labor agreement reads, in part: ". . . the employer is entitled to lead and allot the work, to engage and dismiss workers at his own discretion and to employ workers belonging to any labor union, or unorganized workers."²⁵

In this country there are two opposing schools of thought among management on such clauses.

²⁵ United States Department of Labor, *Report of the Commission on Industrial Relations in Sweden*, p. 48, U. S. Government Printing Office, Washington, D. C., 1938.

One group believes: "To list is to limit. In other words, the unions take for granted that the things we fail to enumerate belong to them."²⁶ Because of the way in which they are phrased, the two management clauses cited previously obviate this otherwise significant objection.

Others oppose the inclusion of such clauses on the grounds that they are apt to weaken management's case in arbitration hearings. This viewpoint is expressed by one industrial-relations executive as follows: "It seems to me that if you attempt to write a statement of management's rights into the contract, you bring into the area of collective bargaining matters which do not belong there. If you make no mention of the management rights, there can be no attack on them in any arbitration proceedings."²⁷

Another viewpoint is that the company has had the rights or functions all along and therefore, since they were not given to the company by the union, there is no need to mention them in the agreement.

Apparently those who oppose the inclusion of such clauses in labor agreements, are fundamentally afraid that such clauses will prove to be inadequate or will boomerang. In many cases there is ample justification for this feeling. A current labor agreement provides an example of a clause of this type which is not merely useless, but actually dangerous:

The management of the plant, and direction of the working forces and of the affairs of the Company, including the right to hire, suspend, discharge for cause, and the right to transfer or lay-off due to lack of work, or curtailment of the production, shall be vested exclusively in the Management of the Company; provided, however, that this right will not be used for the purpose of discrimination for or against any member of the Union, and

²⁶ Statement made by Andrew J. Percival, reported in *Practical Approaches to Labor Relations Problems, American Management Association Personnel Series No. 91*, p. 49, New York, 1945.

²⁷ Statement made by Robert S. Newhouse, reported in *Practical Approaches to Labor Relations Problems, American Management Association Personnel Series No. 91*, p. 50, New York, 1945.

*provided further that any act of the Management deemed by an employee to be objectionable may be presented as a grievance.*²⁸

The phrase "any act of the Management deemed by an employee to be objectionable" covers a lot of territory and promises untold trouble for the company concerned.

In spite of the difficulties certain to be encountered in negotiating it, a well-designed management-functions clause is likely to afford real protection to the employer. This is so for several reasons:

1. Collective bargaining is an ever continuing process. Unions have the legal right to bargain during the life of the labor agreement on any subject matter which is within the scope of collective bargaining but which falls outside the agreement. Collective bargaining is not a process that ceases when a contract has been signed. The Supreme Court has recognized that even after a labor agreement has been signed, "the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes."²⁹ The advantage of a management-functions clause in this connection is that it ties down a number of important issues on which the union might otherwise be able to bargain during the life of the agreement.
2. Such a clause, existing as an integral part of a signed agreement, impresses employees and union stewards and makes the settlement of many day-by-day grievances in the shop much easier.
3. In spite of some contentions to the contrary, a well-designed management-functions clause is a protection to the

²⁸ Italics added. The contract in question permitted all unresolved grievances to be taken to arbitration.

²⁹ *N.L.R.B. vs. Sands Mfg. Co.*, 306 U. S. 332, 342 (1939). Although this decision pertains to the National Labor Relations Act there is reason to feel that the same reasoning will also apply in the case of the Labor-Management Relations Act. However, it will undoubtedly take some time before the position of the Board and the Courts on this point is made clear.

company in arbitration proceedings. "If there is no clause which distinctly says that transfers, allocations of material and equipment, the direction of the working force, etc., are reserved exclusively to management, the arbitrator may decide that they are not reserved to management and give them away."³⁰

4. The union's laws or constitution may contain provisions that are adverse to management's interests and tend to result in featherbedding or restriction of output. An analysis by Florence Peterson of union constitutions and bylaws disclosed many interesting examples of this nature. For example, The International Brotherhood of Boilermakers, Iron Shipbuilders, and Helpers of America, AFL, "is opposed to piecework, premium, task, contract, and merit systems," and the constitution of the International Cigarmakers' Union of America, AFL, "contains a prohibition against working over eight hours a day." The Window Glass Cutters League of America, AFL, has a constitution which "contains detailed rules concerning holidays, daily output, working outside of regular hours, etc." The Granite Cutters' International Association of America, AFL, has provisions in its constitution covering "hazardous working conditions" and "forbidding employers from advertising for help without approval of local," and The International Printing Pressmen's and Assistants' Union of North America, AFL, has work rules which regulate "maximum hours and days per week to be worked and overtime rates; number of presses to be tended by each member; restriction on running more than one edition a day by member; ban on members feeding their own presses or preparing presses without an assistant. . . ."³¹

³⁰ Statement by Charles R. Hook, Jr., *Practical Techniques of Collective Bargaining, American Management Association Personnel Series No. 86*, p. 5, New York, 1944.

³¹ See: Florence Peterson, *Handbook of Labor Unions*, pp. 53, 85, 149, 159, 160 and 300, American Council on Public Affairs, Washington, D. C., 1944.

A well designed management-functions clause is particularly important where such restrictive rules are known to exist, since such a clause will provide protection against union attempts to apply the rules by unilateral action.

WORK STOPPAGES AND STRIKES

In addition, management's security is imperiled by any forced cessation of production. While employees are engaged in work stoppages or strikes, overhead marches on, costs rise, profits diminish or disappear, and eventually working capital is dissipated.

Work stoppages or strikes that take place during the life of an agreement are of two types: (1) full-fledged walkouts called and supported by the union; (2) "quickie" work stoppages, involving anywhere from a handful of persons to the whole work force. The "quickie" is usually of short duration and is typically started by local hotheads without the sanction of responsible union officials.

The majority of unions and union leaders believe in the sanctity of the labor agreement and are guided by this belief in practice. Therefore, a clause prohibiting work stoppages during the lifetime of the contract is management's best protection against a union-sponsored work stoppage.

At the 1945 Labor-Management Conference, called by the President, the members of both the labor and the management committees reached agreement on the following:

It is of fundamental importance that contract commitments made, be observed without qualification by employers, employees, and labor organizations. Both parties to the agreement must impress upon their associates, and members and officers the need for careful observance of both the letter and the spirit of collective bargaining agreements. Employers, employees, and unions should not provoke one another into any action in violation of the labor agreement.³²

³² Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, U. S. Government Printing Office, Washington, D. C., January, 1946.

Although the majority of unions and union leaders abide by the terms of their agreements it is unfortunate that certain unions and union locals are less reliable. This seems particularly true of so-called left-wing unions. "Wherever or whenever union officials talk and act in terms of class warfare, no provisions of a labor contract will prevent contract evasions and violations."³³

It should also be pointed out, however, that in some cases management itself may deliberately break a contract, as in the case of "run-away" plants. In other instances management may deliberately provoke the union until the union breaks the agreement. Not long ago one executive explained to the writers that this was done by his firm when a lay-off due to lack of work was known to be imminent. The object of provoking the strike was to "discredit the union" and to make the employees feel that their loss of income was the union's fault and not the company's. It is difficult to see how satisfactory industrial or labor relations can be built upon such foundations.

Fortunately, the wayward managements and unions that engage in such tactics are in the minority. The bigger problem in most plants to both management and union leaders, is the "quickie" strike. This is particularly true in the more recently organized mass-production industries.

Management's best protection in this situation is a no-strike clause with teeth in it.

A typical no-strike clause reads as follows:

There shall be no strikes, stoppages, or any other interference with or interruption of the normal conditions of the Employer's business by the Union or its members. There shall be no lock-out on the part of the Employer.

Prior to passage of the Labor-Management Relations Act it was usually not too difficult to gain union acceptance of such a clause particularly if the agreement contained arbitration provisions. Strong opposition invariably developed, however, when

³³ Ralph A. Lind, *Salient Characteristics of Postwar Union Agreements*, American Management Association Personnel Series No. 97, p. 20, New York, 1946.

management tried to spell out penalties for violation of the clause. In terms of logic, management's position was strong. The employee who violated the clause violated the labor agreement and should therefore be subject to appropriate discipline. Emotionally, however, many unions are reluctant to give management sole right to mete out the punishment. Nevertheless, in order to avoid subsequent long-drawn-out hearings before an arbitrator, it is still good management policy to exert every effort to get in the contract an agreement with the union on the penalties for the offense.

There are various types of penalties that may be sought. For example, an employee who took part in a "quickie" strike might, at the discretion of management, be discharged or lose seniority. If provision for this type of punishment is in the contract, the clause should preferably be phrased so that any or all of those participating can be penalized at management's discretion. This is important where a large percentage of a group of employees engage in a strike. In such a case management might want to penalize the ringleaders alone, and might find itself in the position of having to hurt itself seriously by a penalty clause so inflexible that a substantial proportion of the working force would have to be discharged.

Another type of penalty clause is contained in an arbitrator's recent decision. Justice Ivan C. Rand of the Supreme Court of Canada acting as arbitrator in a dispute between the UAW-CIO and the Ford Motor Company ruled that all employees, regardless of union affiliation, must pay the regular dues of the union through a compulsory check-off. The award then went on to provide that:

If a strike is called without the support of a majority of all employees, the union forfeits the check-off privilege for two to six months.

The union, through the appropriate local or international officers, must repudiate wildcat or unauthorized strikes within seventy-two hours. This action must include declaring picket lines illegal. Failure to do this results in the union losing its check-off for one to four months.

Participants in wildcat or unauthorized strikes are subject to a fine of \$3 per day, and to a loss of one year's seniority for each week and fraction thereof that the strike lasts.³⁴

The restraining effect of a no-strike clause with appropriate penalties, while excellent, by no means wholly solves the strike problem. Tedious, time-consuming and persistent effort by union and management officials at the local-plant level to develop mutual respect and good faith is probably the only really effective long-term answer.

Management should carefully analyze each threatened or actual work stoppage in an effort to determine the real underlying causes. It may be found that "quickies" are employee devices to force management's attention to complaints that do not fall under the scope of the labor agreement. Or such strikes may be protests against shop conditions that employees have not been able to get cleaned up under the grievance procedure. Also, snail-like grievance handling in some plants is an invitation to work stoppages. It has already been pointed out that, like most other industrial-relations problems, the solution to the problem of preventing "quickie" strikes is not simple. Contract provisions prohibiting this practice and providing penalties undoubtedly help, particularly in the case of that small minority of employees who are kept in line only by fear of discharge. However, where such work interruptions are frequent, something fundamental is wrong either with management or the union, or both. It is here that a careful analysis by top management to determine and, if possible, remove the causes of the work stoppages is of the greatest potential value. Such a program takes time and hard work but is the only basic cure for the disease.

It is obvious that collective bargaining is the keystone to management security in its dealings with organized labor. Management should battle to the limit to avoid contract provisions that will unduly restrict its ability to manage. Likewise, if un-

³⁴ "The Rand Labor-Relations Formula at Work," *Factory Management and Maintenance*, vol. 105, No. 3, p. 95, New York, March, 1947.

acceptable clauses already are in the labor agreement as the result of negotiations during past years, management should attempt to negotiate them out of succeeding agreements. Further, the company should have the protection of both a soundly constructed management-functions clause and a no-strike clause with suitable penalties for violations.

Although it is far easier to outline this program than it is to reach agreement on it with a union, it is a management "must" to strive in this direction. The importance of aggressive, persuasive management negotiation on this issue is vividly illustrated by the following comment of William H. Davis: "In my limited experience, the respective rights of management and labor are whatever rights each can persuade the other to allow it." ³⁵

IMPACT OF THE LMRA ON "NO STRIKE, NO LOCK-OUT" CLAUSES

Section 301 (a) of the Labor-Management Relations Act provides that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." Thus either party to a labor agreement who violates a "no strike, no lock-out" clause may be sued by the other. However, in terms of the practical realities this will typically be a long drawn out procedure and will be scant help to management in settling most strikes, even those in violation of a contract. Nevertheless, the possibility of subsequent legal action will probably tend to restrain some otherwise hot headed individuals.

In addition, Section 502 of the Act contains a saving provision which labor can use if it wishes to justify contract violations

³⁵ William H. Davis, *Management's Stake in Collective Bargaining*, American Management Association Personnel Series No. 81, p. 35, New York, 1944.

arising, actually or allegedly, from hazardous working conditions. The clause reads: "Nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act." Mines, shipbuilding, chemical processing firms, and most of heavy industry could possibly encounter difficulties with this proviso.

One further problem directly stemming from the LMRA is the fact that it is now immeasurably more difficult to negotiate no-strike clauses than before. Many of the larger unions have issued instructions to their locals and negotiating personnel that such clauses are not to be included in labor agreements in the future.

■VIII

THE GRIEVANCE PROCEDURE

SPRIEGEL has defined a grievance as “a state of mind resulting from the worker’s feeling that he is not receiving, has not received, or will not receive those satisfactions, rewards or recognitions which he had hoped for in his work or to which he was entitled.”¹ This definition is obviously broad. It makes room for all types of employee dissatisfaction, ranging from largely or wholly imaginary personal gripes of individual workers all the way to the very complex and technical questions of labor-contract interpretation sometimes raised by unions. One of the important contributions of such a general definition is that it recognizes that, for the most part, the grievance is one of the problems of human relations that antedates by many centuries the relatively recent growth

¹ William R. Spriegel, *Discussion of Grievance Procedures*, American Management Association Personnel Series No. 57, p. 19, New York, 1942.

of organized labor. As one writer has aptly expressed it: "The problem of grievances is not a new one; it is as old as the employer-employee relationship itself."²

This does not mean that unionization does not give rise to new problems and new types of grievances. Nor does it mean that the volume of grievances will not increase when a union enters the picture. In fact, the usual result of the activities of organizers and stewards is that larger numbers of grievances will be raised by employees.

As might be expected, differing explanations are usually offered by labor and management as to the reasons for the increased volume of grievances attending the unionization of workers. Spokesmen for labor have traditionally waxed eloquent on the theme that grievances create unions. Barkin, for example, asserts:

It is redundant to speak about grievances under a system of collective bargaining. The union itself is an outgrowth of labor's dissatisfaction. The union is labor's grievance machine. . . . As spokesman of the aggrieved worker, the union has played and will continue to play its historic and primary role.³

There is much truth in the foregoing quotation. However, as many managements know from bitter experience, this is only one side of the story. The altruistic tone of such pronouncements is too often conspicuously absent in actual practice at the local level—sacrificed to the exigencies of the philosophy that the end justifies the means. Thus, organized labor in practice usually does not scruple to use any means at its disposal to expand its coverage and its strength. There are union organizers who *do* create or invent grievances in an effort to encourage employees to join up, so that their wrongs may be rectified. There are union leaders who *do* generate strife and unrest in jurisdictional battles that have no bearing on the welfare of the rank and file.

² John A. Lapp, *How to Handle Labor Grievances*, p. 9, National Foremen's Institute, Deep River, Conn., 1945.

³ Solomon Barkin, "Unions and Grievances," *Personnel Journal*, vol. 22, No. 2, p. 38, June, 1943.

Facing the practical problem that they are expected to produce results in terms of increased union membership and income, organizers and other officials often resort to tactics that scantily resemble the lofty ideals set forth by their top-level spokesmen.

Likewise, once a group of employees is organized, stewards and other union officials are not always averse to using the freedom they may have under the collective-bargaining agreement in order to invent or suggest grievances to workers. The following is an example of one problem with this kind of activity:

We found that two or three members of the executive board of the union were ringing in in the morning and immediately setting out through the plant to (they said) settle grievances. What they were doing was cooking them up. We broke that up. A strike was threatened as a result, but it never materialized.⁴

As is discussed in more detail later in this chapter, such activities on the part of local union officials are occasionally the result of a carefully planned campaign to win concessions from management by means of the grievance procedure that could not be gained in contract negotiations. Much more commonly, however, no such elaborate motivations are involved. Instead it is probable that the union officials concerned are actuated by an excess of zeal (especially in newly organized firms) and desire to prove their efficiency by showing a good record of grievance handling. It is also quite likely that some union officials simply enjoy conferences and meetings with management more than work on their regularly assigned jobs.

However, irrespective of conflicting viewpoints over who is responsible for originating grievances, modern management is becoming increasingly aware of the importance of handling them fairly and expeditiously.

"Alert management knows that an unsettled grievance, real or imaginary, expressed or unexpressed, is a source of potential trouble. The hidden grievance grows and rankles and soon

⁴ E. M. Cushing (Panel Member), *Improving Management's Score at the Bargaining Table*, American Management Association Personnel Series No. 91, p. 55, New York, 1945.

arouses an emotional attitude that is completely out of proportion to the original complaint. When it reaches this stage, the ground is laid for widespread dissatisfaction which may lead to interruption of production. This is why it is so important that grievances be brought out into the open at an early stage.”⁵

THE SUBJECT-MATTER OF THE GRIEVANCE PROCEDURE

In the organized firm five classes of grievances are discernible. These are:

1. Disputes over the interpretation of any clause of the labor agreement.
2. Disputes over the application of the labor agreement as it affects any employee, or group of employees, or the union.
3. Disputes which are not covered by the agreement, and which are of minor importance to the parties; these usually arise out of day-by-day working relationships.
4. Disputes which are not covered by the agreement but which represent important issues to both the union and the company.
5. The personal complaints of employees.

One problem facing the negotiators of grievance procedures is whether or not all of these categories should be included. Some agreements specifically limit the subject-matter to the first two cited above. As an example, one contract defines grievances as “. . . any differences, disagreements, or disputes . . . as to the interpretation or application of this agreement by the employees, or as to the rights of the Union, or any employees thereunder . . .”

Other negotiators have placed no limitations upon the subjects that may be raised as grievances by the union. Typical of this type of clause is the following: “Should *any* difference arise

⁵ U. S. Department of Labor, *The Foreman's Guide to Labor Relations*, Bulletin No. 66, p. 14, U. S. Government Printing Office, Washington, D. C., 1944.

between the Company and an employee or the Union, an earnest effort shall be made to settle such difference immediately in the following manner . . ." (A five step procedure follows, the last step being arbitration. However, only certain types of grievances are arbitrable under the terms of this agreement.)

Those negotiators who limit the subjects which can be raised as grievances, generally do so as an indirect means of restricting the issues which can be taken to arbitration, as well as to avoid time-consuming conferences with employees or their representatives. However, a good many experienced negotiators feel that such restrictions do not foster good industrial relations. Recognizing from past experience that even wholly imaginary grievances are nonetheless very real and important to the employees concerned, they feel that management stands to gain by clearing up such problems. As an example of this line of thought, Lee H. Hill has stated:

I think it is good industrial relations to permit employees to bring any point they wish to the attention of top management, using, possibly, the first two or three steps of the grievance machinery. But there are many matters which could be called grievances which should definitely not go to an outsider.⁶

In a closely similar vein, Lapp has commented:

There is no strong reason why the parties should put limitations on the subject matter of their conferences, since either party is free to reject any proposal. Grievance procedures may be safely organized to permit any kind of a grievance to be brought up. There can be no loss in discussing any matter which an employee or the union or the employer considers a grievance. Discussion will generally show whether it is a grievance or not. Time may be wasted, but it is better to waste time than to leave a possible sore spot unattended. Moreover, foremen, superintendents, union officials, and higher company officials cannot know the scope of a grievance until it has been discussed. They may refuse properly, after discussion, to consider it if it is clearly outside the scope of a proper grievance under the contract. They can, of course, turn a grievance

⁶ Lee H. Hill, *Practical Techniques of Collective Bargaining*, American Management Association Personnel Series No. 86, p. 8, New York, 1944.

down and that is the end of the matter, unless it is an issue appealable to arbitration.⁷

It should be noted that both quotations suggest that the important consideration for management is not *what* may be taken up under the grievance machinery but rather *how far* the matter may be carried. Thus, as will be discussed in the next chapter, the more wide-open the arbitration clause, the more important does it become to negotiate definite restrictions on the subjects which may be recognized as grievances.

COLLECTIVE-BARGAINING ASPECTS OF THE GRIEVANCE PROCEDURE

Unions will at times attempt to extend their gains by securing favorable interpretations of contract clauses, or to amend or supplement the contract through the grievance procedure. In such instances the handling of grievances actually becomes a continuation of the collective-bargaining process. In this regard the vice president of a large manufacturing company is quoted as follows: ". . . It has been our experience that the grievance procedure is used by the union to attempt to obtain matters which were not obtained during negotiations. Accordingly, the procedure is used for collective-bargaining purposes in some cases."⁸

Labor unions are aware of the strategic value of such disguised bargaining. For example, the UAW-CIO, in a specially prepared handbook, offers the following advice to its stewards: "Your troubles come from grievances which aren't clearly covered by the contract. Many complaints are apparently justified, but seem to have been overlooked when the contract was drawn up. When this happens, you have to go through the agreement with a fine-toothed comb for the nearest approach to the case. Sometimes it will take some pulling and hauling, but after all,

⁷ John A. Lapp, *How to Handle Labor Grievances*, p. 71, National Foremen's Institute, Deep River, Conn., 1945.

⁸ Neil Chamberlain, "The Nature and Scope of Collective Bargaining," *Quarterly Journal of Economics*, vol. 58, No. 3, p. 369, May, 1944.

the United States Constitution has been used for 155 years and still covers everything Congress does pretty well. A good union contract should cover most conditions in the plant for twelve months."

Recognizing that this process will not cover all eventualities and that only formal negotiations will resolve some problems, the handbook goes on to state: "Sooner or later in every shop there comes a justified grievance that is entirely new, that can't be covered by any amount of stretching the contract or any earlier grievance settlement. Your only course then is plain common sense. If the issue is important—if it covers a number of workers or affects basic company practices—ask the top body in your bargaining machinery (shop or plant committee) to formulate policy on it, and to negotiate a formal supplement to the contract."⁹

The way in which this latter advice worked out in practice in one case is illustrated by the following comments made by an official of the UAW-CIO: "At one of the auto plants here in Detroit the men went in and asked for a ten-minute rest period in the morning and afternoon, though there was no contract provision for it. They got it, and so the contract was changed by collective bargaining."¹⁰

Admittedly it is difficult, and in some cases impossible, to distinguish clearly between matters that should be handled as grievances and those that should be settled by collective bargaining. The problem can, in addition, be further aggravated if a clever union representative is able to pull and haul one or more clauses of the existing agreement effectively enough to make it appear that they cover the issue.

In spite of the complexities involved, however, an understanding of the fundamental differences between collective bargaining and grievance handling under the agreement will undoubt-

⁹ Revised edition, *How to Win for the Union*, pp. 48 and 49, International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO.

¹⁰ Neil Chamberlain, "The Nature and Scope of Collective Bargaining," *Quarterly Journal of Economics*, vol. 58, No. 3, p. 367, May, 1944.

edly help both parties (but especially management) to stay out of trouble. As Chamberlain points out:

Negotiations for a contract can be distinguished from settlement of grievances under the contract in the same manner that legislation can be distinguished from judicial proceedings. The former are concerned with *decisions of interests*. The purpose of grievance proceedings, on the other hand, is to interpret, rather than establish, the conditions of employment. They involve *decisions of rights*.¹¹

The obvious implications are that the wise course of action for both sides is to segregate their disputes over rights from those over interests. All cases involving rights (i.e., matters already covered by contract) should then be handled only through the grievance procedure (and eventual arbitration if the agreement so provides). To deal with disputes of this sort outside of the grievance procedure generates disrespect of both sides for the judicial process. If this happens, stewards and foremen are by-passed and the grievance machinery eventually breaks down.

On the other hand, it is quite clear that disputes involving interests should *not* be handled through the grievance procedure. In this regard Pierson has commented: "Cases involving basic changes in agreements should be deferred until the time for drafting new agreements has arrived. If the issues are so pressing that they cannot be postponed, the cases still should not follow the regular grievance procedure. Instead, they should go directly to the parties who drafted the agreement, for they are the only persons possessing proper authority to alter the terms. Only in this way can the grievance machinery perform the function for which it was designed."¹²

¹¹ *Ibid.*, p. 363.

¹² Frank C. Pierson, *Collective Bargaining Systems*, p. 30, American Council on Public Affairs, Washington, D. C., 1942.

THE NUMBER OF STEPS IN THE GRIEVANCE PROCEDURE

Depending primarily upon the size of the organization, grievance procedures usually consist of from two to six steps, exclusive of arbitration. In small organizations, the foreman or supervisor typically handles the first step and the owner or manager will enter the second, which is usually the last step. An example of this simple grievance procedure, taken from the laundry industry, is presented in Figures 3 and 4.

Irrespective of the number of steps involved, it is an essential element of sound labor-relations policy that all grievance procedures start with the lowest level of true supervision (usually called "foreman"). The foreman is the first point of contact with the worker, and is looked on by the employee as being the boss. To by-pass him in the grievance procedure, either in designing or in using it, will appreciably undermine his authority and prestige and will almost certainly lessen his ability to manage his department effectively.

For best results it is not enough merely to insist that the foreman be given first opportunity to hear and settle grievances. He must, in addition, have the *authority* to make the decisions required. Furthermore, he must be given sound instruction on how to handle grievances and on what is the correct interpretation of various clauses in the labor agreement. Some observers feel that under these conditions ninety-five percent of all grievances can be satisfactorily handled by the foreman. In actual practice the percentage of grievances settled at this level probably ranges from fifty to ninety-five percent depending upon local circumstances.

Another point that should be watched closely is that the grievance procedure should progress in an orderly manner from the foreman on up to top management, going from one distinct level of managerial authority to the next. Likewise, the corresponding union personnel entering the picture should represent distinct levels of increasing authority. Pierson summarizes this concept as follows: "One rule, however, can be laid down quite cate-

TYPICAL GRIEVANCE PROCEDURE FOR SMALL FACTORIES

Provided in the standard agreement between the Amalgamated
Clothing Workers of America and the Laundry Workers Joint Board
of Greater New York, A.C.W.A. and the New York Laundry Industry

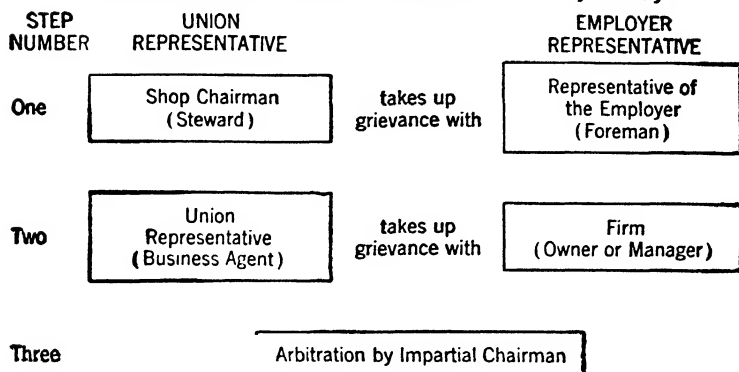


FIGURE 3 13

gorically: each step in the procedure should be on a genuinely different level than the preceding step.”¹³

Failure to follow this simple rule is likely to result in a cumbersome and unsatisfactory grievance procedure. If the same individual or group represents the same side during two or more steps of the procedure it will obviously be more difficult to make progress in settling the dispute. If an individual gives his answer in one step of the procedure he is not likely to change it in the next step. In at least one case the UAW-CIO has negotiated seven steps in a grievance procedure—before arbitration. In both the fourth and fifth steps the union is represented by the same shop committee, and in both the fifth and sixth steps the company is represented by the superintendent of the plant. Such procedures may well breed distrust and charges of stalling on both sides.

¹³ U. S. Department of Labor, *Settling Plant Grievances, Bulletin No. 60*, p. 12, U. S. Government Printing Office, Washington, D. C., 1943.

¹⁴ Frank C. Pierson, *Collective Bargaining Systems*, p. 18, American Council on Public Affairs, Washington, D. C., 1942.

GENERAL PATTERN OF GRIEVANCE MACHINERY IN LARGE PLANTS

STEP NUMBER	UNION REPRESENTATIVE		EMPLOYER REPRESENTATIVE
One	Steward and Aggrieved Employee	to	Foreman
	or Steward alone		
	or Aggrieved Employee alone		
(Additional appeals may be made by the steward to higher line supervision, or the foreman may consult his superiors before giving the steward his answer.)			
Two	Union Business Representative (Business Agent)	to	Industrial Relations Office or Higher Line Supervision
	or Chief Plant Steward		
	or Chairman of Grievance Committee		
Three	Plant Grievance Committee (May be assisted by an International Representative)	to	Top Local Management or Industrial Relations Office
Four	International Office of Union (Regional or District Representatives)	to	General Office of Corporation
Five	Arbitration		
	(Conciliation where arbitration is not provided)		

FIGURE 4 ¹⁵

THE FIRST STEP IN THE GRIEVANCE PROCEDURE

No aspect of grievance procedure has been the subject of more controversy than the so-called first step. The difficulty commonly centers around the question of *who* shall present the

¹⁵ U. S. Department of Labor, *Settling Plant Grievances, Bulletin No. 60*, p. 16, U. S. Government Printing Office, Washington, D. C., 1943.

grievance. Shall it be the employee alone, with the union steward left out? Shall it be mandatory that the steward handle the grievance regardless of whether the employee so desires? Or, shall the matter be left optional with the employee, allowing him to present his case either with or without the steward?

Employers have generally insisted that the employee should go to his foreman alone in the first step, feeling that: "Better relationships are fostered if individuals and foreman frankly talk over a grievance together, without the intervention of a third party. When the dispute relates solely to an individual and he goes first to his steward and the latter to the foreman, a rift possibly develops between the employee and his foreman. . . . The foreman has rights also and he should be protected against the innuendo that he is regarded so unreasonable as to be unwilling to listen to a grievance of an employee." ¹⁶

Most unions, on the other hand, prefer to have the steward present the employee's grievance to the foreman. One typical union argument is that many workers are too timid to face the foreman alone. Another is "that the individual worker needs the assistance and moral support of his steward to prevent the possibility of being talked out of his grievance by the foreman." ¹⁷ In addition, many unions prefer to present the employee's grievance to the foreman for the very practical reason that they can then take credit with the employee if the case is settled to his satisfaction.

Another, usually unexpressed, factor which influences both management and labor is that, in some plants, large segments of the employees are not members of the union and do not want or intend to join. This situation is not unusual in industrial units. Where it exists, management is generally reluctant to force all employees to take up their grievances with the foreman through the union steward, since it recognizes that many employees

¹⁶ John A. Lapp, *How to Handle Labor Grievances*, pp. 106 and 107, National Foremen's Institute, Deep River, Conn., 1945.

¹⁷ U. S. Department of Labor, *Settling Plant Grievances*, Bulletin No. 60, p. 10, Bureau of Labor Statistics, U. S. Government Printing Office, Washington, D. C., 1943.

would probably prefer to take no action at all rather than to have to submit their cases through this procedure. This line of reasoning is, of course, anathema to organized labor. The traditional counter-argument is that the employer has ulterior motives—that he wants the workers, both union and non-union, to be free to initiate grievances on their own so as to weaken the power and prestige of the union and eventually destroy it.

As is true of so many labor-relations issues, there are strong arguments on both sides. The position of the foreman is weaker when all employee grievances must be lodged with him through the union steward, and the position of the union is weaker when this is not so. Quite often the parties have compromised and decided that the employee may present his grievance to his foreman *with or without* his steward. In many instances this type of clause was ordered by the National War Labor Board during World War II.

However, since the passage of the Labor-Management Relations Act, the picture has changed for employers engaged in interstate commerce. Section 9 (a) of the act, in part, provides: "That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, that the bargaining representative has been given opportunity to be present at such adjustment." This does not affect the type of first step grievance procedure that the parties may negotiate but it does change the old NLRB concept of the individual employee's rights. Formerly the Board ruled that employees could present grievances but only the union could negotiate the settlement. Under the new law employees can both present and negotiate their grievances if they choose to do so, provided the union is given the opportunity to be present and that the settlement is not inconsistent with the agreement.

PLACING THE GRIEVANCE IN WRITING

The great majority of procedures handle the grievance on an oral basis in the first step. Typically both labor and management prefer this arrangement since greater flexibility results and faster decisions are reached. In addition, the possible need for face saving, introduced when written documents must be signed, is absent, thus both sides can secure more satisfactory answers on small problems.

However, for the protection of both the union and management, grievances should be put in writing if they are not disposed of informally in the first step. This advice is eminently sound because oral grievances have an unfortunate and strong tendency to grow and gather extraneous matter as they are appealed from one step of the procedure to another. Like gossip, they can be distorted step by step, and, democratically enough, so can management's answers.

This state of affairs is as bad for labor as it is for management. Therefore very few unions will object to putting the grievance in writing after the first step. For example, in a booklet prepared for their stewards, the International Association of Machinists comments:

The grievance should be written. If the worker does not write it himself, he should at least sign it. This keeps him from walking out on the steward and leaving him holding the bag. It also makes him think twice before raising unimportant issues. Once a grievance has been taken up with a foreman and is not settled, it is desirable to have the foreman sign the grievance sheet and state his reasons. This will keep the foreman from changing his story and it will also make him report the matter immediately to management. . . . Writing down the grievance gives both the union and the steward a record of the case and establishes precedents for future cases. It impresses the company as being more business-like. It becomes a record of accomplishment of both the union and the steward.¹⁸

¹⁸ *Leadership Training Program*, pp. 32 and 33, New York State Council of the International Association of Machinists, New York.

In the same vein, one experienced arbitrator states:

The importance of clear records of the steps in the grievance procedure cannot be overstated. The complaint should be written out fully enough to identify the subject matter and the provisions of the contract which govern the case. It need not state the supporting evidence. When the complaint is discussed in the first steps, the two parties should make it their business to clarify the issue so that there can be no dispute about what is claimed. In order to prevent any misunderstanding, the complaint should be put in writing at least in the second stage.¹⁹

TIME LIMITATIONS ON HANDLING GRIEVANCES

All too frequently both employer and union have failed to show the proper diligence in processing grievances, and each party has complained of the negligence and pettiness of the other. As a result, in some instances, the grievance-handling machinery has broken down. For example, in one case known to the authors 2200 unsettled grievances were allowed to accumulate, all awaiting management action. Fitzpatrick cites another instance where there were over 3000 grievances pending.²⁰

On the union's part, procrastination has occurred primarily in placing the grievance in writing and starting it through the procedure. To prevent this, and to protect themselves against possible unnecessary retroactive pay awards or other adjustments, some managements have negotiated clauses similar to the following:

The employee shall present the grievance to his Union Steward . . . and said Union Steward, with or without the employee, shall present such grievance to the employee's Department Foreman *within two working days after knowledge by the employee of the cause of complaint; otherwise the grievance shall be considered waived.*

¹⁹ John A. Lapp, *How to Handle Labor Grievances*, p. 102, National Foremen's Institute, Deep River, Conn., 1945.

²⁰ Bernard H. Fitzpatrick, *Understanding Labor*, p. 173, McGraw-Hill, New York, 1945.

The two day limitation in this example is more restrictive than most such clauses. Other contracts reviewed by the authors have had time limits of from five to thirty days.

At first glance, a clause such as that just cited would appear to be an effective means of preventing a union from delaying the initiation of grievances. Upon analysis, however, two facts soon become evident that throw grave doubt upon the usefulness of such clauses.

1. The whole point of the clause hinges on the day and hour of "knowledge by the employee of the cause of complaint." A more vague and ill-defined starting point could hardly be found. Who is to judge when the employee had "knowledge" save the employee himself? If management disagrees with his statement, how is the dispute to be resolved? It would appear that the net result here is potentially one of delay rather than expediting of the procedure.
2. The clause does not actually specify *any* limitation on retroactivity, assuming that the grievance is initiated within two days after the employee was aware he had a complaint. Thus, although the condition complained of (wrong rate, for example) might have existed for as long as a year before being brought up, management would still be liable retroactively for the entire time.

This does not mean that time limitations are not valuable devices to encourage a union to submit its grievances promptly. On the contrary, time-limit clauses that are properly conceived and phrased are of distinct value in making for prompt action, and also protect management against possibly large financial or other penalties because of unreasonable delay in the initiation of grievances.

The most objective type of time-limit provision is that in which the limitation is directly related to the date on which the grievance was submitted in writing to the foreman or other appropriate management representative. A typical clause of this nature is the following:

In case of a grievance or other controversy involving any continuing or other money claim against the Company no award shall be made which shall allow any alleged accruals prior to thirty (30) days before the date when such grievance or other controversy shall have been presented to the Company in writing.

The number of days specified will vary from clause to clause, but the wise management will not establish too short a limit even if the bargaining opportunity presents itself. Excessive limitation is not only obviously inequitable but it would also undoubtedly result in strong negative reactions on labor's part which would make the negotiation of any reasonable limits impossible in future contracts.

Such clauses may be included as part of the arbitration provisions of the contract or incorporated directly into the grievance procedure. Either arrangement is satisfactory. However, it should be again emphasized that the limits should be equitable, while at the same time short enough to provide employees and the union with an incentive to initiate grievances promptly.

Desirable though it may be as an end in itself, success in stimulating a union to initiate grievances without delay resolves only a part of the over-all problem. The rest of the problem lies in procrastination by both the employer and the union *after* grievances have been filed. In this regard Lapp comments as follows: "One of the most frequent criticisms of the operation of grievance machinery is that it takes too much time to get a dispute finally settled. There is plenty of evidence back of this criticism. Delays have been frequent and prolonged. Weeks have elapsed, even months, between the filing of a grievance and the completion of the proceedings."²¹ Similarly, but without the same objectivity, one union handbook states: "One of the chief causes of complaint on the part of our members is that oftentimes the management delays settlement of a grievance so long. There is nothing so exasperating to the worker with a grievance; and when you are convinced that the man-

²¹ John A. Lapp, *How to Handle Labor Grievances*, p. 202, National Foremen's Institute, Deep River, Conn., 1945.

agement is simply 'stalling,' you should go right to bat, and don't let them get away with that kind of tactics."²²

Fortunately it is not too difficult for the parties to solve this problem, provided that both sincerely desire to expedite the proceedings in handling grievances. Basically, all that is necessary is to agree on the maximum time interval that will be allowed between each step in the grievance procedure. Typically, such time limitations range from one to seven days per step and they are usually the same throughout. The principal requirement in negotiating such arrangements is to agree on an interval that is long enough to permit the interested parties to deliberate the issue adequately but not so long as to cause the grievance to be lost or forgotten.

PAYMENT OF STEWARDS FOR HANDLING GRIEVANCES

"There is no unanimity of opinion, even among union leaders, on the matter of payment for time used on the job in handling grievances. Some contend that grievance work is for the benefit of employees and ought to be paid by the employer; others argue that it is union business and should be paid for by the union. In at least one case, the National War Labor Board struck out a provision in a panel report—at the instance of the labor members—which provided that stewards and grievance committees should be paid by the employer for work performed during working hours in the handling of labor grievances."²³

Some unions, such as the United Steelworkers of America, generally prefer to pay their own stewards and officers for time spent in handling grievances. As might be expected, however, the majority of industrial unions try to negotiate clauses specifying that management must pay union stewards for this activity. In the case of craft unions this question usually does

²² Taken from pamphlet issued by District #28, of the United Steelworkers of America, p. 6, 1944.

²³ John A. Lapp, *How to Handle Labor Grievances*, p. 118, National Foremen's Institute, Deep River, Conn., 1945.

not arise since the local union or trades council typically will have a full time business agent, one of whose functions is the direct handling of grievances.

As also might be expected, management, by and large, is reluctant to pay stewards for handling grievances and will ordinarily consent to do so only under pressure. A typical management viewpoint, as expressed by one authority is: "The provision for payment by the company for time lost by union representatives has been so terribly abused in many instances that I am inclined to vote against it."²⁴ However, like the unions, employers are by no means all of one mind on this issue. For example, the Personnel Director of one large corporation has said: "My personal view is that it is desirable to pay the union representatives for all time spent in settling grievances, providing you have the clause to the effect that the union shall not solicit grievances. After all, in trying to settle grievances, we are working in the interests of management as well as in the interests of the union."²⁵

In practice, labor agreements range from those which permit the stewards to spend all day and every day handling grievances while being paid by management, to those which do not require payment for any of the time so spent. Within these extremes there are infinite variations. Some contracts allow a specified number of hours per day or week. Others provide that grievances will be handled exclusively after working hours. Some require management to pay for half the time spent by stewards in handling grievances while others specify full pay for the first one or two steps of the procedure but nothing for the remaining steps.

The existence of such variations in contractual provisions indicates that the question of whether to pay or not to pay is not one to be readily answered on the basis of broad generalization or abstract principle. Apparently this is another example

²⁴ Robert S. Newhouse, Panel Member, *Clinic on Clauses in Collective Bargaining*, American Management Association Personnel Series No. 86, p. 13, New York, 1944.

²⁵ Russell L. Greenman, Panel Member, *ibid.*, p. 13.

of the type of problem which is best understood in the light of local attitudes and working relationships.

Thus, where a union in a large plant demands some form of paid time-allowances for its stewards, management might flatly refuse, even though it was in accord with the principle, only because the cost of this arrangement would undoubtedly be large. On the other hand, the same demand in a small plant, where the cost would be negligible, might also be rejected because the employer, again in accord on the general principle, was convinced that the local stewards were of poor caliber and would misuse the privilege, either idling their time away or using it to stir up trouble. In these two hypothetical instances the outcome is identical in so far as management's reactions are concerned, yet it is obvious that the underlying causal factors are not at all the same.

It is easy in hypothetical cases, as above, to state that management has simply refused a union demand. However, practical bargaining strategy may well dictate that a demand of this nature be granted, in which event the problem becomes one not of underlying reasons for rejection but, instead, one of setting up adequate managerial safeguards. In this connection, the employer should exert himself to see that the labor agreement contains more than the mere provision that stewards shall receive pay for certain specified amounts of time spent in handling grievances. In addition to this, the contract should clearly state:

1. That union stewards are not to leave their place of work or work area during working periods without first securing the permission of their foremen.
2. That all time taken shall be used *only* for the proper handling of legitimate grievances as provided in the agreement.
3. That the steward shall report back to his foreman after handling the grievance.
4. That before a steward engages another employee in conversation during working periods, about his grievance,

the permission of the employee's foreman shall first be secured.

5. That upon entering another department during working periods the foreman of that department shall be first contacted and the reason for the steward's visit explained to him.

If management includes provisions such as the foregoing in the agreement it is reasonably well protected against grievance-handling abuses on the part of union stewards.

IX

ARBITRATION

ARBITRATION is the process through which one or more persons, variously termed arbitrators, referees, umpires, or boards of arbitration, hear and decide disputes between two or more parties.

DEFINITION AND BACKGROUND

The application of arbitration has been used to settle many different kinds of controversies for thousands of years. "Hammurabi wrote it into our earliest known legal code. The early Greeks fostered and used it centuries before Christ. The Emperor Justinian adopted it into the Roman code. It survived the Dark Ages, was rescued and incorporated into the rules of the great Guilds."¹

¹ See: *Blue Book of American Arbitration*, p. 3, American Arbitration Association, New York, November, 1945.

As a technique, arbitration is very flexible, applicable to virtually any type of controversy except one involving criminal questions. However, it is at present principally encountered in connection with commercial, international, and industrial (labor-relations) disputes.

In the case of labor relations, the application of arbitration is a relatively recent phenomenon. In the nineteenth century, as the trade union movement began to grow, there are examples of its occasional use in the settlement of labor-management differences. "In 1865 the iron manufacturers of Pittsburgh locked out the puddlers when they demanded a wage increase. This dispute was settled by arbitration, the earliest recorded wage arbitration case in the United States."²

Another nineteenth-century example is that of the Chicago Journeymen Lathers' Independent Union which in 1893 negotiated a labor agreement containing the following arbitration clause: "That any and all disputes arising as to the construction of this agreement, or any part of it, shall be settled by arbitration."³

Since the turn of the century there has been a steady increase in the acceptance of the principle of arbitration by both labor and management. In this process the contributions of World Wars I and II have been of considerable importance since the need of some peaceful method of resolving labor disputes so as not to interfere with war production introduced arbitration to many who had previously been strangers to the method. In spite of the fact that some experiences under war-time arbitration were bad and the parties were probably antagonized from it, rather than won over, there is little doubt that many converts were gained.

² Florence Peterson, *Strikes in the United States 1880-1936*, *Bulletin No. 651*, p. 18, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1938.

³ *Written Trade Agreements in Collective Bargaining*, *Bulletin No. 4*, p. 270, National Labor Relations Board, Division of Economic Research, Washington, D. C., November, 1939.

The best evidence of the extent to which arbitration has now come to be accepted in labor relations is that the majority of contracts currently negotiated do contain such clauses. An analysis of over 1200 agreements conducted by the U. S. Department of Labor's Bureau of Labor Statistics indicates that three out of four provide for arbitration as the terminal point of the grievance procedure. Almost the same proportion was found by the National Industrial Conference Board in an independent survey made at about the same time.⁴

Parallel with the acceptance of arbitration, there has also been a widespread recognition of the value of conciliation (or mediation) as an approach to the problem of settling labor disputes. Although similar to arbitration in that both have as their objectives the resolution of controversies without bitter and costly strikes, conciliation is in other respects very different, and the two methods should not be confused. An arbitrator actually hears evidence and renders a decision that is binding irrespective of whether or not it pleases the parties. The function of a conciliator, on the other hand, is solely that of guiding and assisting the parties to agree on a mutually satisfactory settlement. His task is to work with the disputants separately and together, suggesting possible compromises and attempting, by whatever other means he has at his disposal, to encourage a harmonious solution of the problem at issue. Whereas the arbitrator may be likened to a judge and jury, the role of the conciliator is more closely akin to that of friend and advisor.

COMPULSORY ARBITRATION

At the present time there is no federal legislation in the United States which provides for compulsory labor arbitration. The closest approaches on the federal level are to be found in the Railway Labor Act and the now defunct National War

⁴ A. A. Desser, "Arbitration of Labor Disputes," *Management Record*, vol. 7, No. 4, p. 95, National Industrial Conference Board, New York, April, 1945.

Labor Board of World War II. The Railway Labor Act establishes an elaborate procedure to ensure that in case of deadlock an arbitrator shall be appointed to settle the dispute. Although the method of selecting the arbitrator is fixed by law (and therefore compulsory) the parties are not compelled to submit any issue to arbitration if they do not wish to do so. Furthermore, they are free to withdraw a case at any time, even after an arbitrator has been appointed. Thus, the essential features of freedom of action have been preserved. In the case of the National War Labor Board, however, the situation was somewhat different. Industry and labor, through their representatives, were put on record as having voluntarily agreed on a "no strike, no lock-out" pledge for the duration of the war in order to avoid interference with war production. This pledge was interpreted to be an expression of unanimously *voluntary* acceptance of arbitration as the terminal point not only of grievances but also of collective-bargaining negotiations. In other words, for all practical purposes arbitration before the various tripartite panels of the NWLB was actually *compulsory*.

Four states—Kansas, Oklahoma, South Carolina and Pennsylvania—have compulsory labor-arbitration laws on their books. However, the U. S. Department of Labor reaches the following conclusions about these laws: "None of the statutes providing for compulsory arbitration appears to be in active use. The outstanding instance of the Kansas statute has been restricted by Supreme-Court decisions and reduced to desuetude by bitter union opposition and a lack of State appropriations for its tribunal. The South Carolina statute referring only to disputes on street railways is obviously limited to rare situations. The Oklahoma constitutional provision merely authorizes legislation and corporate charters to require compulsory arbitration of labor disputes in mining or public-service enterprises, and there is no indication that this authority has ever been invoked. Only one of the seven statutory methods of arbitration in Pennsylvania contains compulsory features and it is limited to disputes which are already the subject of court action. Thus, the

State arbitration statutes without vital exception provide for voluntary arbitration.”⁵

For the most part, both labor and management are strongly opposed to any type of compulsory arbitration. Although the President's Joint Labor-Management Conference held in Washington in the fall of 1945 reached unanimous agreement on the desirability of arbitration as the terminal point of the grievance procedure, the committee's report concluded: “Nothing in this report is intended in any way to recommend compulsory arbitration, that is, arbitration not voluntarily agreed to by the parties.”⁶

“The Committee on Manufacture of the Chamber of Commerce of the United States has gone on record against compulsion in labor disputes. The National Association of Manufacturers has resolved that: ‘Compulsory governmental arbitration of labor disputes is contrary to American principles.’”⁷

Organized labor feels equally strongly on this subject. The American Federation of Labor has said: “Compulsory arbitration means compulsory labor. Compulsory labor means involuntary servitude. . . .”⁸ Along this same vein the editor of “Labor,” the official weekly newspaper of the railroad labor organizations has stated: “Americans should not countenance compulsory arbitration of industrial disputes or approve the proposal to limit, or perhaps entirely nullify, labor's right to strike, because both are thoroughly anti-democratic and, therefore, un-American.”⁹

⁵ *Labor Arbitration Under State Statutes*, U. S. Department of Labor, Office of the Solicitor, pp. 23-24, Washington, D. C., 1943.

⁶ “Labor-Management Conference on Industrial Relations,” *Monthly Labor Review*, Serial No. R 1811, p. 6, U. S. Government Printing Office, Washington, D. C., 1946.

⁷ William H. Davis, “How to Insure Industrial Peace,” *Compulsory Arbitration of Labor Disputes*, compiled by Julia E. Johnsen, *The Reference Shelf*, vol. 17, No. 6, p. 130, H. W. Wilson, New York, 1945.

⁸ *Compulsory Arbitration of Labor Disputes*, compiled by Julia E. Johnsen, *The Reference Shelf*, vol. 17, No. 6, p. 134, H. W. Wilson, New York, 1945.

⁹ *Ibid.*, p. 151.

VOLUNTARY ARBITRATION

Voluntary arbitration may be used by the parties either in the negotiation of the agreement, or in the interpretation or application of the clauses in an existing agreement, or both.

It is true that in the past voluntary arbitration has occasionally been used to settle strikes or to resolve disputes that stem from contract negotiations. However, such disputes generally arise because the parties are unable to agree on major issues such as recognition, wages, and management's functions. Typically both sides feel that issues of this type are too important to be decided by any third party. Thus, a former President of the National Association of Manufacturers has said: "Some issues have been withheld from arbitration because they involve questions of principle which neither side would be willing to leave to an arbitrator, either because of conviction that the issue cannot be compromised or because it is of such grave public importance that private citizens, acting as arbitrators, should not undertake to resolve it."¹⁰

Boris Shishkin, chief economist of the American Federation of Labor, likewise has stated: "I do not believe that wages should be arbitrable as a general rule. . . ." ¹¹

Labor and management for the most part agree that strikes or disputes arising out of contract negotiations should not be arbitrated. However, probably management is more consistently opposed to arbitration in this instance, with labor following a practice of expediency. If the union is strong it may prefer economic sanctions to arbitration, but if it is weak, arbitration may prove more fruitful than the picket line or the threat of it. In any event, either by inflating its original demands or by making "repeated trips to the well for water," the union stands a good chance to gain all or most of what it really wants through

¹⁰ William P. Witherow, *Arbitration Journal* 6:16-18, Winter 1942 (also *Compulsory Arbitration of Labor Disputes*, pp. 182 and 183).

¹¹ A. A. Dessler, "Arbitration of Labor Disputes," *Management Record*, vol. VII, No. 4, p. 96, National Industrial Conference Board, New York, April, 1945.

arbitration. Therefore, it is easy to see why the great majority of managements refuse to arbitrate issues that remain unresolved in contract negotiations.

However, arbitration does play an important and significant role in labor relations as the terminal point of the grievance procedure contained in a labor contract. Labor and management are in general accord on this point and on many occasions have expressed themselves as favoring such arbitration provisions in bargaining-agreements. As an example, Lee Pressman, former general counsel of the CIO, has observed: "The history of collective bargaining has disclosed that it is labor that has consistently struggled to have incorporated in collective-bargaining agreements provision for the arbitration of disputes that may arise during the life of the agreements."¹² Likewise, one industrial executive has said: "We insist on an arbitration clause in all our union contracts. We think it is the only enlightened way of handling differences."¹³

Statistics cited earlier in this chapter indicate that such expressions of opinion are not just examples of lip service to the arbitration principle. With arbitration provisions in approximately three out of every four contracts, it is obvious that both labor and management are sincerely interested in settling the great preponderance of their differences voluntarily and without resort to strike or lock-out.

TYPES OF DISPUTE SUBJECT TO ARBITRATION

One of the most important aspects of arbitration is the negotiating and phrasing of a clause that accurately expresses the intent of the parties. It is particularly important to spell out clearly the types of dispute which may, or may not, be taken to arbitration. Loosely worded clauses that fail to accomplish this objective indicate all too often that management's negotiators have fallen down on the job. This is so because, by and

¹² A. A. Desser, *op. cit.*, p. 96.

¹³ A. A. Desser, *op. cit.*, p. 97.

large, it is management that has the most to lose in such cases. Certainly, employers who have been unwary enough to agree to "unlimited" arbitration clauses—i.e., those failing to define arbitrable subjects—are likely to find the consequences both embarrassing and costly.

Some labor agreements state that any grievance or complaint or any difference may be arbitrated. This represents the classic type of unlimited arbitration. Not only is everything in the contract left wide open but, in addition, fundamental issues beyond the realm of the contract are potentially subject to arbitration as soon as a complaint or difference arises concerning them. This latter point is by no means a far-fetched one. Labor agreements typically specify that the union is recognized as representing the employees in matters relating to rates of pay, wages, hours of employment, or other conditions of employment. Since the phrase "other conditions of employment" is seldom defined, it might well be construed, under an unlimited-arbitration clause, as the basis for an arbitrator's ruling on virtually any phase of the operation of a business. The following statement vividly illustrates what has actually happened in some cases:

"Some very interesting things have been taken to arbitration—among them, whether management has the right to schedule the flow of material, or to change production, or to go from one type of product to another. In fact, in one company, the union requested that the president of the company be disciplined because he had had the effrontery to reply to a telegram from Under Secretary of War Patterson commending the employees of the plant on their war production. Since the wire was addressed to the entire work-force, the union officials took the position that only a union president could reply."¹⁴

Although the emphasis has, to this point, been on the dangers to management that are inherent in wide-open arbitration provisions, it is evident that labor, too, is not necessarily immune. For example, a particular union with well-established work

¹⁴ *The New Pattern of Labor Relations, American Management Association Personnel Series No. 79*, p. 29, New York, 1944.

rules might well find these cherished extra-contractual regulations made the subject of arbitration in the event an employer complained that they were unfair. Likewise, though remote, there is the possibility that portions of the union's constitution or bylaws might be brought under fire, with the danger of an adverse ruling by the arbitrator. These, of course, are extreme instances but no more so than some that have actually occurred in management's case.

From the foregoing it is clear that both sides have reason to be interested in limiting the scope of arbitration, though admittedly labor's interest is less extensive. The most logical and least controversial type of safeguard available is that of tying the arbitrator down to the specific terms of the written agreement. Clauses similar to the following are often used for this purpose:

The arbitrator shall have no power to add to or subtract from or modify any of the terms of this agreement or any agreements made supplementary hereto. Furthermore, the arbitrator shall not rule on proposed amendments to or modifications of this agreement or its extension or renewal.

Basically, such a clause limits the arbitrator solely to the consideration of disputes relating to the interpretation or application of the agreement. This is of advantage not only to the parties but also the arbitrator since it unequivocally sets forth for him the framework within which he is to operate.

Many managements, however, tend to feel that the general limitations discussed in the foregoing, though desirable, do not go far enough, since certain matters might still be allowed to go to arbitration that should be decided only by direct negotiation between the parties. It is often maintained, for instance, that promotions (particularly to positions outside the bargaining unit) and the application of management techniques such as time study and job evaluation should be excluded from arbitration. This is also true of disputes over the basic wage structure, hours of work or work schedules, and merit increases.

Although it is a relatively simple task to accumulate lists of

items that, for one reason or another, should be excluded from arbitration, it is often quite another problem actually to negotiate the exclusions. Experienced union negotiators cannot help but recognize that exclusion means, in effect, that management has the last word about the topics excluded unless the union wishes to go on strike. In view of this, management's representatives should not be surprised if they encounter strong opposition to most proposals to restrict the range of subjects that may be taken to arbitration.

INITIATING ARBITRATION PROCEEDINGS

The great majority of collective-bargaining contracts which contain arbitration clauses provide that either party may initiate arbitration proceedings after the grievance procedure has been complied with. An analysis by the Bureau of Labor Statistics of the U. S. Department of Labor indicated that in ninety-three percent of the contracts containing arbitration clauses either side could initiate the procedure.¹⁵

In contrast to those agreements which permit either party to submit disputes to arbitration, a few contracts provide that issues can be submitted only at the request of the union, or at the request of an individual employee or his representative. Apparently in these situations management is not interested in being able to submit disputes to arbitration, although it is clearly to its advantage to be free to do so.

In addition, some labor agreements permit arbitration only when both parties mutually agree to arbitrate a dispute. "This arrangement, sometimes referred to as permissive arbitration, allows either party to veto a request for arbitration, thus forcing the party desiring adjustment either to accept the other's terms or to resort to economic pressure by way of a strike or lock-out. In a few agreements, specified disputes may be arbitrated at the request of either party, but other disputes require mutual

¹⁵ U. S. Department of Labor, Bureau of Labor Statistics, *Arbitration Provisions in Union Agreements, Bulletin No. 780*, p. 5, Washington, D. C., 1944.

consent.”¹⁶ It should be pointed out that such “permissive” arbitration clauses are in reality merely another way of limiting the scope of the subject matter that can be taken to arbitration. Although they may provide a possible avenue to a compromise when the parties are deadlocked over specific exclusions proposed in collective bargaining, they have the disadvantage that they may very well fail to accomplish what was intended. Thus, instead of fostering the peaceful resolution of disputes by means of arbitration, such clauses may lead to unnecessary conflict because of the mutual-consent requirement.

The statistics previously cited show that almost all negotiators recognize the importance of providing both sides with free and equal access to arbitration, within the limits of the remainder of the agreement. It is difficult to visualize any other approach as being really effective in minimizing the necessity of resorting to economic sanctions.

SELECTION OF THE ARBITRATOR

As the result either of carelessness or of lack of experience, those negotiating labor agreements sometimes fail to provide a satisfactory means of selecting the arbitrator, or arbitration board, when the need arises. Some contracts fail even to state how the arbitrator is to be selected. Others merely state that the arbitrator shall be selected by mutual agreement between the parties. Obviously one problem with this type of clause is what to do when the parties fail to reach agreement on who shall act as the arbitrator. This type of defect is surprisingly common. A 1944 survey indicates that forty percent of *ad hoc* arbitration clauses provided that the arbitrator be selected by mutual agreement between the parties but *failed* to provide any automatic means of resolving a possible deadlock.¹⁷

In other cases the contract will provide for an arbitration

¹⁶ *Ibid.*, p. 6.

¹⁷ *Arbitration Provisions in Union Agreements, Bulletin No. 780*, p. 9, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1944.

board composed of an equal number of representatives to be appointed by each side. In spite of the fact that the chances for deadlock with such an arrangement are very great, such clauses continue to be negotiated.

In an effort to eliminate the possibility of deadlock inherent in clauses of the foregoing types, some contracts provide that each of the parties shall appoint an arbitrator and the two thus appointed shall choose a third person. Again, however, this is no solution at all unless some provision is made to resolve deadlock in the very likely event that the two arbitrators are unable to agree.

Besides failing to provide a dependable method of selecting an arbitrator, the foregoing procedures have another fault. Most of them do not ensure that the arbitrator, or board, will be experienced in arbitration proceedings and labor-relations matters. Of course, this may not be a serious defect in a simple case which can be handled satisfactorily by an amateur who is known and respected by both sides, such as a minister, priest, or rabbi. However, it can be of great significance where important issues are involved and much is at stake. It is here that the amateur is a bad risk. In the words of Updegraff and McCoy:

The field of labor relations, with its deep and illuminating historical background, its complexities in modern industrial society, its deep-seated animosities, and its own peculiar terminology, is so vast a study in itself and so great a mystery to the average citizen that the finding of a *competent* amateur is next to impossible. The very words which roll so easily off the tongues of personnel directors and union men . . . are meaningless to the uninitiated.¹⁸

How then, without endless wrangling and risk of eventual deadlock, shall the parties secure competent professional arbitrators? The most sensible and straightforward method is for both sides to stipulate that the arbitrator will be selected from a panel of experienced men submitted by a neutral agency

¹⁸ C. M. Updegraff and W. P. McCoy, *Arbitration of Labor Disputes*, p. 37, Commerce Clearing House, Washington, D. C., 1946.

specializing in such matters. The three agencies most commonly designated for this purpose in the past were the United States Conciliation Service, the American Arbitration Association, and various State Labor Boards or mediation agencies. In one recent year alone, the U. S. Conciliation Service provided arbitrators in 1470 cases. However, under the Labor-Management Relations Act, the former U. S. Conciliation Service has been superseded by the Federal Mediation and Conciliation Service. This agency, unlike the former Conciliation Service, is permitted by law to provide arbitrators to decide disputes arising over the application or interpretation of an existing collective-bargaining agreement "only as a last resort and in exceptional cases."¹⁹ As a result of this legal restriction, undoubtedly the unions will tend to utilize the services of the American Arbitration Association even more than in the past.

The American Arbitration Association maintains a panel of qualified arbitrators in various parts of the country from which the parties can draw. The procedure of the Association is to submit "simultaneously to each party identical lists of arbitrators having the qualifications demanded by the type of controversy to be determined, which qualifications are made known to the parties. Under rules of the Association each party, independently *and without consultation with the other*, strikes from this list the names of any individuals he might wish to veto for any reason whatsoever, thus leaving on the list only arbitrators satisfactory to him. . . . Each party is instructed to number the names in the order of preference. When the lists are returned the agency makes the choice of an impartial arbitrator, or board, as the case may be, from among those men whose names remain on both lists. The individual who stands highest in the preference of both parties is tendered the office of arbitrator. If he is unable to serve at the time designated, the office is tendered to the one having the next highest preference rating."²⁰

¹⁹ See: Section 203 (d), Labor-Management Relations Act of 1947.

²⁰ From article prepared by Paul Fitzpatrick as presented in *Labor Relations Reporter*, vol. 15, No. 6, Bureau of National Affairs, Washington, D. C., October 9, 1944.

SINGLE ARBITRATOR OR ARBITRATION BOARD?

Arbitration tribunals may consist of a single arbitrator or an arbitration board. Apparently both are about equally frequent. If an arbitration board is used, it may consist entirely of neutral members (usually an odd number), all of whom are arbitrators in the accepted sense of the word, or it may be composed of equal numbers of representatives of both parties plus one or more neutral members. In this latter case, the representatives of the parties typically serve in a partisan capacity and are not actually arbitrators at all. Their prime functions is to serve as advocates of their respective sides, and the impartial member or members are the only true arbitrators in the case.²¹

This bipartisan-board procedure is favored by many management representatives. The vice president of one concern has stated his reasons thus: ". . . when the umpire is reviewing company briefs, transcript of records, and what not, I should like to have a company representative sitting close by so that the important fundamentals of the case are clearly kept before him."²² Inasmuch as the partisan members of such boards play an important role, it is evident that considerable care should be exercised in selecting a competent representative. Since it is generally recognized that unions are more experienced in arbitration matters, this is likely to be a more serious problem to management than to labor. Thus, in deciding between a bipartisan (or "tripartite") panel and a single arbitrator, an employer should give careful consideration to the caliber of the individual who is slated to be his representative in the event a case should go to arbitration. "*With the right sort of representa-*

²¹ See: Updegraff and McCoy, *op. cit.*, p. 27. These writers suggest that confusion would be avoided by calling the partisan members of such boards or panels by some title other than "arbitrator," such as "representatives in arbitration."

²² Statement by Albert S. Regula, *Practical Techniques of Collective Bargaining*, American Management Association Personnel Series No. 86, p. 15, New York, 1944.

tive on a tripartite panel, an employer who has the choice should elect it every time in preference to a single arbitrator. His man on the panel can really direct the presentation of the employer's evidence and rebuttal with great effectiveness." ²³

On the other hand, if a really experienced person is not available to represent the employer on a panel, he is much better off taking his chances with a single arbitrator. The use of a single arbitrator is typically cheaper, faster, and more direct in so far as allocation of responsibility to a specific individual is concerned. However, it is also more hazardous in that the entire responsibility for sometimes important and costly decisions rests on one man's shoulders. It is principally for this reason that employers, as mentioned above, prefer (or should prefer) the bipartisan panel where their representatives have greater opportunity to protect their interests. Obviously, where a single arbitrator is to be used, great care should be exercised in selecting a really competent and neutral person. Of the three general alternatives that are available to the parties—i.e., single arbitrator, neutral arbitration board, or bipartisan board—the neutral board would appear to be the least desirable. It is obviously more cumbersome and expensive than the use of a single arbitrator and it fails to allocate the responsibility clearly to any one member of the group, thus allowing the possibility that the members may hide behind the anonymity of the group. In addition, there is always the possibility that the members of such a board will tend to compromise when they disagree with one another. When it occurs, this compromise tendency is a serious hazard to the integrity of the institution of arbitration which should be solely a judicial process.

In this regard Senator Wayne Morse has said: "A sound criticism of labor arbitration, as it functions in many cases, is that too few arbitrators have grasped the full significance of arbitration as a judicial process. Too many arbitrators still take judicial notice of interests and facts not established in the record of the

²³ *Pitfalls to Avoid in Labor Arbitration*, p. 8, National Foremen's Institute, Deep River, Conn., 1946. (*Italics added.*)

hearing. Too many arbitrators still try to apply the principle of compromise in their decisions.”²⁴

A PERMANENT OR *AD HOC* ARBITRATOR?

The great majority of arbitration clauses in labor agreements provide that the arbitrator, or board, is to be selected whenever the need arises (*ad hoc* arbitration).

Although the agreements of a number of large concerns, such as the General Motors Corporation, the Ford Motor Company, and Swift and Company, provide for the appointment of a permanent umpire or arbitrator, this practice is rarely encountered among small- or medium-sized organizations. In their analysis of arbitration clauses in labor agreements the Bureau of Labor Statistics of the Department of Labor found that only 43 out of 915 contracts (4.7 percent) stipulated permanent arbitration machinery. However, because of the size of the firms involved, these 43 agreements included 28 percent of all the employees covered by the 915 agreements.²⁵

As might be expected there are arguments both for and against the permanent arbitrator. Among other things, those in favor claim that the arbitrator is always available and that cases can therefore be decided more quickly than under *ad hoc* arbitration. “Moreover, it is on the whole advantageous to have arbitrators who are thoroughly familiar with the industry in which they are working, a requirement more likely to be fulfilled by permanent arbitrators than by those appointed for single cases.”²⁶

Those opposed to the appointment of a permanent arbitrator point out that the parties may have difficulty getting rid of a

²⁴ Wayne L. Morse, “The Scope of Arbitration in Labor Disputes,” *Fourth Annual Stanford Industrial Relations Conference*, p. 113, Stanford University, Palo Alto, Calif., 1941.

²⁵ *Arbitration Provisions in Union Agreements*, Bulletin No. 780, pp. 3 and 4, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1944.

²⁶ Frank C. Pierson, *Collective-Bargaining Systems*, p. 34, American Council on Public Affairs, Washington, D. C., 1942.

permanent arbitrator who proves unsatisfactory. Others feel that in some cases where the labor agreement provides for a permanent arbitrator, unions attempt to take to arbitration every dispute which has not been settled on their terms. Still others feel that the diversity of problems brought to arbitration is such that no one person would be technically qualified to act as arbitrator in all instances.

However, the strongest argument for *ad hoc* arbitration appears to be the fact that the majority of concerns simply do not have a sufficient number of arbitration cases during the life of their agreements either to warrant selecting and retaining a permanent arbitrator or to afford him a chance to become familiar with the problems of the industry, company, and union. Moreover, the *ad hoc* arbitrator is readily disposed of, for if he proves unsatisfactory to one or both parties, they need merely refuse to accept him in the future.

All in all, it would seem that the procedure of *ad hoc* arbitration would be preferable for the average company, particularly if the arbitrator is selected from a panel of qualified persons submitted by some neutral agency.

On the other hand, in the case of a large concern the parties might well benefit by having a permanent arbitrator since, as a result, cases should be more quickly handled. Furthermore, the arbitrator should tend to become more familiar with the problems and circumstances of the parties and consequently able to render more judicious decisions in the cases brought before him. If the parties agree to have a permanent arbitrator, the labor agreement should provide, for their mutual protection, that he will serve only so long as he is satisfactory to both sides. Thus, either party can remove the incumbent whenever it is considered to be necessary.

ARBITRATION SUBMISSIONS

Once the arbitration clause of a contract has been invoked by either party, the next step is the preparation of a "submission," or statement of the issue or issues to be arbitrated. Since the arbitrator can rule only on the specific questions presented to

him by the parties, the submission is of major importance. Therefore, submissions should always be carefully prepared in written form, to reduce to a minimum the possibilities of misunderstanding. For this same reason, the submission should clearly define the arbitrator's powers as set forth in the labor agreement, either by incorporating the text of the applicable clauses or specifying them by number.

Since most arbitration cases have their origins as grievances it is often a temptation to try to simplify the above process by agreeing that the written grievance itself shall constitute the submission. This cannot be recommended for general usage. Even if the obviously serious error of failing to set forth the arbitrator's powers were corrected by the inclusion of reference to the applicable clauses in the labor contract, it would still be a hazardous procedure, as is evidenced by the following comment: "Unions frequently contend that the original grievance should comprise the submission, but anyone who is familiar with the wording of grievances will readily concede that suggestion to be impracticable. Many grievances are long, rambling, poorly written affairs; indefinite statements which require interpretation before the parties themselves can fathom their intent."²⁷

Usually the parties will be able to prepare a mutually satisfactory submission. Where this is not the case, due to disagreement over wording (or facts) or simply because of refusal to cooperate, the arbitrator (if requested) may have to rule on the wording of the issue on the basis of independent submissions before he can proceed to his principal task of ruling on the issue itself. Certainly if either side is not in accord with the other's submission it should immediately present its objections to the arbitrator (or arbitration agency) and the opposing party. In this way the question will be kept open until the submission is mutually agreed upon or determined by the arbitrator.

The whole process of arbitration requires a large degree of

²⁷ Guy B. Arthur, Jr., "Techniques of Successful Labor Arbitration," *Personnel*, vol. 21, No. 5, p. 300, American Management Association, New York, March, 1945.

good faith and honest willingness to try to resolve disputes in an orderly manner. Thus, it is possible that in the absence of good faith one party may deliberately stall the proceedings by stubborn refusal to agree on a submission. In such cases it is difficult to find any uniformly satisfactory means of control. Requesting the arbitrator to determine the submission is one approach, as already mentioned, but this can be hazardous to both parties since it is possible (though not probable) that the arbitrator might change the issue entirely in his ruling. A general contract provision making awards retroactive to the date of initiation of the grievance or leaving the date up to the arbitrator might discourage management from delaying, but it would not affect the union. On the other hand, omission of retroactivity provisions entirely would probably discourage the union from using delaying tactics but it certainly would have no such effect on management. It is evident that principal reliance must be placed on the willingness of the parties to cooperate in preparing the submission. Once past this point, however, the arbitrator is in a good position to control the situation. Furthermore, once the issue has been defined, the parties are usually anxious to present the best possible case and are unlikely to want to prejudice their chances of winning by a display of obstructive tactics.

PREPARING FOR ARBITRATION

A case that is worth taking to arbitration should be worth winning, regardless of how relatively unimportant it may appear to be. If for no other reason, considerations of prestige alone should be sufficient to motivate both parties to make a determined effort to protect their respective interests. Apparently there are no simple short cuts available for achieving this result. As Arthur puts it: "In the winning of arbitrations, there is no substitute for good preparation. If you can't prepare an airtight case, it's advisable to withdraw from the arbitration as best one can."²⁸

²⁸ Guy B. Arthur, Jr., *op. cit.*, p. 300.

One of the basic requirements of good preparation is to rely on facts and logic rather than long-winded rhetoric. In this regard, one experienced arbitrator observes: "It should be remembered that argument, no matter how persuasive, unsupported by evidence and facts, is of little value to an arbitrator when he is called upon to decide a typical labor dispute."²⁹ In view of this it is clear that the accumulation of all pertinent data is an important phase of preparation. Even more important, however, and more difficult as well, is the task of deciding *which* of the accumulated facts to use and *how* to use them. This is a problem that requires good judgment and a high degree of skill in evaluating and organizing the available information so as to present the best possible case. When this has finally been accomplished, the result is, in effect, a trial brief—an outline of the case as the interested party plans to present it before the arbitrator.

At this point the question often arises as to whether or not it is worthwhile to go on and expand the outline into a formal written brief that may be presented to the arbitrator and the opposition. Some arbitrators feel that oral presentation of the case at time of hearing, using the outline as a general guide, is all that is necessary in many cases. Although this may be true in specific instances due to the elementary nature of the case or local custom or preference, it cannot be recommended as a general rule. On the contrary, the preferable procedure is to continue the preparation of the case to its logical conclusion and complete a written brief for presentation to the arbitrator (and the opposing party) at the hearing. This should normally involve little additional work since the planning and organizing will already have been done in preparing the outline. In return for whatever extra effort may have been involved, the party in question will have not only a more polished presentation but also the assurance that the full story will be before the arbitrator when the parties are no longer present in person to answer questions or otherwise clarify obscure points.

²⁹ Wayne L. Morse, *op. cit.*, p. 112.

There are no fixed rules governing the form or mode of preparation of written briefs. Naturally they should be clear, accurate, and as concise as the complexities of each case will permit. As a guide, one experienced labor relations expert advises that, in general, a brief should include the following.

1. The full names and addresses of the parties involved.
2. A statement indicating the submission agreed upon.
3. An interpretation of the submission and what is involved therein.
4. A concise, pertinent history of the case from its inception (as a grievance) to date. At times, some background material should be included if it is relevant. A definite conclusion should be reached and stated at the end of this historical record.
5. The introduction of signed statements, records of meetings, or the oral testimony of witnesses to prove the case. Great care must be exercised in the selection and use of this material, especially the testimony of witnesses. (The opposition, as well as the arbiter, will question not only all such information but the witnesses, too. . . . It is well, whenever possible, to use expert testimony to verify practices, procedures, exhibits, etc. The experts called on should be thoroughly educated in advance because, under cross-examination, they will need all the help that can be afforded them.)
6. The introduction of exhibits, such as earnings records, workload computations, time-study analyses, attendance sheets, discipline reports, etc., to prove contentions. When such information is compiled in the form of tables, charts, or pictures, it is most effective. Copies of all original data used as evidence in the hearing should be included in the briefs. Originals should be available for the arbiter's inspection but should never be turned over to him, since they might be mislaid or misappropriated.
7. Excerpts from the contract clauses having direct bearing on the case, along with an explanation of the importance of the issue.
8. Summary of conclusions which specifically prove each point cited in the submission. This should end with recommendations to the arbiter.³⁰

³⁰ Guy B. Arthur, Jr., *op. cit.*, p. 301.

THE ARBITRATOR'S AWARD

The decision of the arbitrator is commonly termed an award. In formulating an award there are certain principles by which an arbitrator should be guided. These are aptly stated by Lapp as follows:

First, the award must be in line with the submission and must not go beyond it. Second, all issues submitted must be decided. Third, the award must not contain provisions impossible of enforcement. Fourth, the language must be so clear that no one can pretend to misunderstand it. Fifth, extreme care must be taken to prevent miscalculations and mistakes in figures and dates. Sixth, it must not direct anything to be done which is contrary to the law or to the agreement between the parties.³¹

Usually the arbitrator's award is made in writing, although oral awards are legally acceptable when not contrary to statute or submission. However, the written award is obviously to be preferred since it is far less subject to misunderstanding. In labor-arbitration cases, it is also the common practice for the award to be accompanied by an *opinion* giving the reasons for the arbitrator's decision. Opinions are frequently of value to the parties in that they serve somewhat to guide them in their subsequent relations. Also, if an arbitrator gives opinions substantiating his decision it acts as insurance to the parties that he has carefully considered the case and weighed all the facts.

The problem of determining the effective date of the award may be handled in various ways. Sometimes the labor agreement will contain one or more clauses indicating the extent to which the decision may be retroactive, thus imposing an automatic limitation on the arbitrator. In other cases, the parties will agree in the submission as to the effective date or will commission the arbitrator to make the determination either with full

³¹ John A. Lapp, *Labor Arbitration*, p. 145, National Foremen's Institute, Deep River, Conn., 1942. See also: C. M. Updegraff and W. P. McCoy, *op. cit.*, pp. 117-120.

freedom or under specified limitations. If this point is in dispute the arbitrator will, of course, have to make the decision.

ENFORCING THE AWARD

The vast majority of labor agreements that contain arbitration clauses, specifically state that the arbitrator's award shall be final and binding on the parties concerned. In most cases there is no problem of enforcing the award, the parties themselves complying with the arbitrator's decision. In this regard the experience of the hosiery industry may be considered typical of a mature system of collective bargaining. "During ten years, some fifteen hundred cases have been ruled upon by the impartial chairman under the National Labor Agreements in the full-fashioned hosiery industry. There is not a single instance of non-compliance or non-acceptance."³²

In some states, such as New York, if the arbitration was conducted under state statutes, the award will be enforced by the courts after due legal process. However, "under most of the [state] labor statutes . . . the only enforcement technique is the common-law method of an independent suit on the award."³³ Because of the expense involved, the length of time required, the sometimes unfavorable publicity, and the fact that many types of awards (particularly against employees) are not practically enforceable, both labor and management have been generally loathe to resort to legal action in labor-arbitration cases. For the most part, when an award is not complied with, the aggrieved party prefers to use economic sanctions or to rely on the pressure of public opinion to force compliance.

PAYMENT FOR ARBITRATION COSTS

Although a few labor contracts provide that the side which loses an arbitration case, shall pay all of the costs, under most

³² *How Collective Bargaining Works*, pp. 459-460, Twentieth Century Fund, New York, 1942.

³³ *Labor Arbitration under State Statutes*, p. 20, U. S. Department of Labor, Office of the Solicitor, Washington, D. C., 1943.

agreements the costs of arbitration are equally shared by the parties.

Equal sharing of the costs is certainly fair and imposes no hardship on either side. The arrangement where the loser of the case pays all or the greater part of the costs may prove disadvantageous to both parties. It is human nature to be optimistic and many more cases may be taken to arbitration in this situation since each side will usually expect to win.

The cost of arbitration cases may vary greatly, depending on the complexity of the case, the number of arbitrators and their per diem charges (usually twenty-five to one hundred dollars), traveling expenses, and such special arrangements as may be agreed upon (hotel rooms for hearings, stenographic fees for verbatim transcripts, etc.). In addition, there may be hidden costs, such as the time of company and union representatives or legal and research expenses. It is evident that there is little point in talking of average costs of arbitration. On the other hand an idea of the range of costs, in relation to the type of case, is given in the following examples cited by Lapp: ³⁴

One case, involving five million dollars in wages, cost the company and the union only the time of the officials who conducted the case, and the payments to the arbitrator amounting to less than \$800 for thirteen days of work and expenses. No counsel was employed in this case. Another case, involving a possible two million dollars in wages and in new working conditions, was conducted by experienced attorneys on both sides and required the attendance of company and union officials of high rank for over thirty days. In addition, the company and the union paid their own representatives on the board. The total cost was probably \$25,000 to the union, and twice that to the company. If a case of equal magnitude were in a civil court the cost would far exceed that. At the other extreme are cases where an arbitrator, at \$25 a day, met with representatives of the two sides after hours on two evenings, and at a total cost of twenty-five dollars the arbitration was completed.

¹ *Op. cit.*, pp. 80-81.

Where the parties desire to reduce arbitration expenses, one practical procedure that is sometimes used is to group several cases together and present them all at the same hearing, thus reducing arbitration overhead. Another method is to seek out arbitrators who will render their services free of charge. Except in cases of unusual need this latter approach cannot be recommended since it has all of the disadvantages previously outlined in the case of "loser pays all" arrangements.



SENIORITY



AGREEMENTS that contain seniority clauses, granting various types of preferential treatment to employees wholly or partly on the basis of their length of service, are in general a fairly recent phenomenon in labor relations in the United States. Although it has been an issue in the case of the railroads and the printing trades for over half a century, seniority has become a common subject of collective bargaining only since the labor movement expanded into the mass production industries in the early 1930's. For example, Slichter's analysis of 388 labor agreements negotiated between 1923 and 1929 disclosed that only 145 (37.4 percent) contained restrictions on the employer's freedom to make lay-offs. However, of 400 such contracts negotiated between 1933 and 1939, 290 (72.4 percent) contained such restrictions.¹

This extension of interest in seniority plans was in part a re-

¹ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 100, Brookings Institution, Washington, D. C., 1941.

flection of the increased strength and organizational activity of labor unions during the 1930's and in part the result of severe lay-offs in almost all industries during the depression.

Seniority clauses have, for the most part, tended to become more and more complex. As an example, the labor agreement of railway clerks in 1909 had one sentence devoted to seniority rules. By 1927 they covered about six pages of the contract.

As seniority clauses become more complex and cover a greater variety of personnel transactions, they become increasingly troublesome to both labor and management. On the other hand, as vested interests are built up among employee groups and as customs and traditions are established within unions, companies, and industries, it becomes increasingly difficult to abolish or amend existing seniority rules. As the result of this unfortunate state of affairs, seniority has become one of the most difficult of all issues to negotiate in many industries.

It is interesting to note that this difficulty does not seem to be inherent in the subject matter itself, as the experience of some other countries shows. In Sweden labor agreements practically never contain seniority provisions. This is not a reflection of weakness on the part of Swedish labor unions or of lack of interest in job security on the part of Swedish workers. As Norgren observes: "There is no doubt that, if they were entirely free to do so, many employers would follow the practice of retaining only the most capable and diligent workers without much regard for their period of service or need for the work. But the fact remains that the principle of seniority, tempered by consideration for the economic needs of individual workers, is very widely adhered to in Swedish industry. And the reason therefor is plain: the employers fully realize that if they failed to take cognizance of the widespread sentiment in favor of this method on the worker side, the unions would soon be up in arms to force its introduction. In other words, it is a case of concession by foresight rather than hindsight."²

² Paul H. Norgren, *The Swedish Collective Bargaining System*, p. 201, Harvard University Press, Cambridge, Mass., 1941.

Almost the same condition is found in British labor relations. Commenting on seniority provisions in British labor contracts, Slichter observes: "I questioned particularly the absence of provisions governing lay-offs. The union men told me that lay-offs were a prerogative of management. I said: 'Surely you don't give the employer freedom to lay off anyone he sees fit.' 'Oh,' they said, 'we have the right to make representations.' I found that the employers also referred to lay-off as a prerogative of management. They pointed out, too, that the unions had the right to make representations, that is, to urge the merits of any particular case."³ Obviously British labor unions feel that detailed contractual seniority provisions are not needed.

For quite different reasons, Soviet Russia is another country in which no particular concern over questions of seniority appears to have developed. Speaking of seniority in relation to promotions—an actively debated and negotiated subject in the United States—a British delegation of steelworkers made the following comment after a tour of Russian plants: "It was interesting to learn that promotions to the better-paid jobs on the processes is by individual merit. *Seniority does not count* and the decision lies with the management. . . ."⁴

THE EMPLOYEE'S ATTITUDE TOWARD SENIORITY

One of the things most desired by all employees is security. This is often repeated in discussions of seniority. Many observers feel that seniority in collective-bargaining agreements is important for employees mainly because it is the major factor in job security. More specifically, as Slichter points out: ". . . workers wish certainty—they want to know where they stand. If they are reasonably sure of not being laid off, they want to know it. Likewise, if they are almost certain to be among the

³ Sumner H. Slichter, *Economic Conditions and Collective Bargaining, Bulletin #8, Collective Bargaining and Cooperation*, pp. 15-16, University of Michigan, Ann Arbor, 1938.

⁴ "Labor Looks at the Soviet Life," *American Affairs*, vol. 8, No. 4, p. 243, October, 1946. (Italics added.)

first dropped, they want to know that also. This is true of non-union as well as union workers.”⁵

In addition, employees want protection against real or fancied supervisory discrimination and favoritism in personnel transactions such as lay-offs, re-hires, and promotions. “Unhappily there has been all too much basis in fact for the sentiment often expressed by industrial workers that: ‘It is not *what* you know but *who* you know that counts in this plant.’ In short, ‘teacher’s pets’ are found not only in school classrooms but in the nation’s workrooms as well. Shop politics can make Tammany Hall look like a nursery school.”⁶

The foregoing are obviously powerful motivating forces—so powerful, in fact, that security is believed by many to outrank all other motives in importance, even including wages.

THE UNION’S ATTITUDE TOWARD SENIORITY

The attitudes of various unions toward the seniority issue vary with the customs and experiences of the union and the nature of the industry. In some highly seasonal industries which are composed of many small employer units, such as the needle trades, the unions for the most part pay little attention to seniority rules and rely on sharing the available work among the employees. On the other hand, R. J. Thomas, when President of the UAW-CIO, said: “. . . seniority is the keystone of union security in a seasonal industry such as the automobile industry; and the UAW-CIO can never commit itself to any policy which does not recognize that the first to be hired will be the last to be laid off.”⁷ Perhaps the prime difference in these two illustrations lies in the fact that for the most part unions in the needle

⁵ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 98, Brookings Institution, Washington, D. C., 1941.

⁶ Elinore M. Herrick, “Application of Seniority Provisions,” *American Management Association Personnel Series No. 82, The Collective Bargaining Agreement in Action*, pp. 17-18, New York, 1944.

⁷ R. J. Thomas, *Seniority in UAW; UAW-CIO Publication #73*, Detroit, Mich., July, 1945.

trades have achieved a high degree of union security while the UAW has not.

Many unions feel that rigid seniority rules are necessary to prevent management from discriminating against their members in various types of personnel transactions. Such an attitude is well illustrated by the comment of one union leader: "We do not like rigid seniority rules any more than the employer does. Yet we are fearful of the anti-union attitude of the company. The status of our organization is still insecure. We couldn't trust the company for a minute. Basically, then, the demand for straight seniority on the part of our local springs from an inferiority complex, a sense of weakness, if you will, in dealing with management. Under a union-shop agreement, we would be much better off if we relaxed seniority regulations and decided each case on its own merits through joint determination."⁸

In addition to seeking seniority rules to protect union members from possible discrimination, some labor organizations favor such rules because they have become popular with the majority of employees. This, of course, makes them very useful during periods of organizational activity. Moreover, the prestige of the union is enhanced by concentrated emphasis on employee security. This emphasis can be, and often is, achieved with a good deal of success by viewing time spent on a job as an investment for which some return to the worker should be forthcoming. Such an approach is emotionally attractive to most workers and this accounts for its strong popular appeal. The following excerpt from one union's organizing literature is a good example of skillful use of the "investment" or "job equity" theme: "Seniority is the working man or woman's most cherished possession. His length of service with an employer is the worker's investment in his job, and as the days, months and years of faithful service pile up, so does his equity in his job."⁹

⁸ Cited by Frederick H. Harbison, "Seniority Systems—Some Danger Points," *Fourth Annual Stanford Industrial Relations Conference*, p. 99, Stanford University, Palo Alto, Calif., March, 1941.

⁹ *IAM Flash*, vol. 1, No. 34, p. 1, International Association of Machinists, Baltimore, Md., March 11, 1946.

However, seniority is not an unmixed blessing to organized labor and has proved in many instances to be a source of serious intra-union controversy. "Conflicts frequently arise within the union when seniority is applied on a divisional or plant-wide basis, those laid off protesting strenuously. Even when it is applied only on a departmental basis, it is, of course, a source of dissatisfaction and protest on the part of the younger men against whom it discriminates."¹⁰

Such seniority troubles are almost inevitable. It is obvious that length of service as a criterion for preferential treatment of some workers will always be more impressively impartial in the abstract than in the concrete, where it adversely affects the welfare of specific individuals. Those who are hurt quite naturally tend to alter their perspective in terms of their own problems—a process which characteristically brings with it the realization that seniority does not eliminate discrimination but merely sets up different rules for it.

This is the basis of one of organized labor's dilemmas. Realizing that there is no such thing as a perfect seniority plan and that, even if unvoiced, employee dissatisfaction is inevitable, labor leaders are nonetheless typically unable to find any effective substitute. They have no alternative but to hold on to the one device with which they are familiar and which they know they can sell, in the abstract at least, to the majority of workers.

MANAGEMENT'S ATTITUDE TOWARD SENIORITY

Modern management typically gives voluntary recognition to the basic principle of seniority in various types of personnel transactions. Vacation plans, pension plans and other welfare plans usually provide greater benefits for senior employees. Frequently, also, managements voluntarily consider seniority in lay-offs, recalls, or promotions among groups of unorganized workers.

Indeed, some managements have gone so far as to state that

¹⁰ Twentieth Century Fund, *How Collective Bargaining Works*, p. 29, New York, 1942.

seniority is basically an employee problem and therefore the union should work out the rules.¹¹

However, many other managements contend that the application of seniority rules in cases of lay-off and recall "impairs their right to employ and to retain the most efficient workers in preference to those of average competency. They maintain further that it encourages mediocrity because workers secure in their jobs will not put forth their best efforts."¹² Likewise, some managements claim that in the case of old long-established concerns, seniority rules create a serious problem with superannuated employees and prevent able young men from getting ahead.

Although management representatives may differ widely among themselves as to the extent seniority should play in cases of lay-offs and recalls, they, for the most part, strongly feel that all promotions should be governed by merit and ability. When surveyed by Princeton University, the typical reaction of managements' representatives on this point was: "That they should have the right to select and train the *best-qualified* workers for advancement to higher skilled jobs. It would be wise, they thought, for union leaders to recognize that an efficient working force is in the best interest of both employers and employees, and that the union should therefore not hamper management in developing such a working force."¹³

TRANSACTIONS IN WHICH SENIORITY MAY PLAY A PART

Although originally an important issue mainly in cases of lay-off and re-hire, the seniority principle expanded in scope

¹¹ Ralph A. Lind, *Salient Characteristics of Postwar Union Agreements*, American Management Association Personnel Series No. 97, *New Concepts in Collective Bargaining*, p. 29, New York, 1946.

Also, Twentieth Century Fund, *How Collective Bargaining Works*, p. 660, New York, 1942.

¹² The Twentieth Century Fund, *How Collective Bargaining Works*, p. 90, New York, 1942.

¹³ Princeton University, Industrial Relations Section, *The Seniority Principle in Union-Management Relations*, p. 19, Princeton, N. J., 1939.

and the unions were soon seeking to apply it in other types of transactions such as promotions. Such efforts were, at times, successful, and seniority has been a criterion in some labor agreements with respect to lay-offs, re-hires, promotions, transfers, demotions, shift choice, distribution of overtime, wage increases, selection of vacation periods, and choice of jobs. And, in at least one case, the union insisted that the company select women employees to be photographed in order of their seniority rather than their pulchritude.¹⁴

Theoretically almost any matter requiring the selection of employees may be handled in terms of seniority. In practice, however, management would be well advised to proceed with great caution in this respect. For example, if shifts are manned solely on the basis of length of service it may well be found that the night shifts will have too few of the older and more experienced employees to function properly. Likewise, the distribution of overtime in the same manner may be equally impracticable since the skills and abilities of employees are not necessarily distributed according to their length of service. From these few examples it can readily be seen that serious managerial problems may well ensue from attempting to apply the seniority principle too broadly. As the National Association of Manufacturers sensibly advises: "In determining where to apply seniority, management should keep in mind that the *more purposes for which seniority is used, the greater the restrictions placed on management's freedom of action.*"¹⁵

A corollary might well be that unions in most cases attempt to impose greater restrictions on management's freedom of action when that freedom has been misused. Thus unions that are seriously seeking to tie transactions such as distributing overtime and choosing shifts down on the basis of seniority will often justify their demands by complaints that management has been discriminatory or arbitrary in specific cases. Admittedly this is not always true. There are some "red hots" in unions who

¹⁴ See: *Baltimore Evening Sun*, June 7, 1945, Baltimore, Md.

¹⁵ National Association of Manufacturers, Industrial Relations Department, *Seniority, Management Memo No. 1*, p. 8, June 1946, New York.

would be satisfied with no less than a stranglehold on every move an employer wants to make. These are the extremists, however, and they are fortunately a small minority. In the majority of cases the wise management will find that it can retain its freedom of action and avoid union insistence on undue extension of the seniority principle, if it eliminates favoritism and discrimination against individuals in personnel transactions. This is preventive labor relations in the best sense of the word.

Most managements have been reasonably successful in this respect, as is attested by the fact that seniority is a substantial issue in collective bargaining only in so far as lay-offs, re-hires and promotions are concerned.

LAY-OFFS AND RE-HIRES

The seniority principle is most commonly used when reductions in the working force are necessary (lay-offs) or when the working force is being built back up (re-hires). In formulating rules to govern these transactions, unions typically try to make the seniority coverage as wide as possible. In other words, their preference is usually to have lay-offs and re-hires made solely on the basis of seniority, and plant-wide seniority at that. On the other hand, most managements attempt to restrict the coverage sufficiently to avoid "bumping" and excessive re-training, both of which increase costs and interfere with production. An example of how bumping has worked in practice is the case of a large electrical-equipment manufacturer where the lay-off of five men is reported to have resulted in 500 employees moving to different jobs.¹⁶ Obviously such transactions are both troublesome and expensive for management.

Basically then, from a cost-accounting point of view, the employer is inclined to feel that the least application of the seniority principle is the best. But the union, prodded by pressure groups of local employees, usually strives to extend it. Thus two

¹⁶ National Association of Manufacturers, Industrial Relations Department, *Seniority, Management Memo No. 1*, p. 14, New York, June, 1946.

important questions are faced by the parties in their bargaining. These are: (1) What shall be the seniority unit? (2) Shall seniority be the sole criterion in cases of lay-offs and re-hires?

THE SENIORITY UNIT

The seniority district or unit may be:

1. The Company
2. The Plant
3. The Department
4. Groups of Jobs
5. A Single Job
6. A combination of two or more of the above.

In some cases, concerns having several plants in the same area and the same bargaining representative will succumb to union pressure for company-wide seniority. Although this may prove practicable in rare instances, it is most often very undesirable for management, because a shut-down or lay-off in one plant would disrupt operations in other plants. As a consequence, company-wide seniority plans are very rarely encountered in multi-plant concerns.

Typically, plant-wide seniority is just as objectionable as company-wide. In effect, plant-wide seniority means that the employee last hired goes first at time of lay-off. If the employee last hired happens to be a toolmaker and the concern needs all of its toolmakers to work on tools and dies for a new job, it will obviously not help either party to lay off the toolmaker and keep a senior employee who might be a janitor or assembler. In such cases unions will sometimes make exceptions to the rule on the basis of the merits of the case. However, this cannot be counted on, and if the union stands adamant on a literal interpretation of a plant-wide seniority clause in a contract the results can be very costly for management and, eventually, for labor too.

In some cases plant-wide seniority has worked out satisfactorily in practice. "Thus, at Seiberling, a company employing about a thousand employees and producing mainly a high-grade

tire, plant-wide seniority has operated effectively.”¹⁷ However, in spite of an occasional example of this sort, a far more typical experience is that of the managerial representative who is quoted as stating: “Our plant has a plant-wide seniority system. The reduction in the number of employees has made necessary many transfers from job to job. This has prevented an increase in efficiency. We have had to re-train men constantly.”¹⁸

In an effort to narrow the basis of the application of seniority and provide a more workable arrangement, many unions and managements have negotiated clauses providing for departmental seniority. Unfortunately, this has not always proved satisfactory either. Some departments in some large concerns may contain over a thousand employees and in effect are almost self-contained plants. In cases of this sort management faces all of the problems of plant-wide seniority. Even in much smaller departments, if there is a wide range of crafts or skills, such as in a maintenance department, or merely if there are numerous different jobs, problems of bumping and re-training will make departmental seniority unduly expensive.

Likewise, employees frequently object to departmental seniority. If heavy lay-offs are necessary in one department containing many long-term employees, and if another department containing many short-term employees continues working, complaints are inevitable. Furthermore, as Slichter has pointed out: “It is not uncommon to find occupations crossing department lines, and for dissatisfaction to arise because men in the same occupation are being dropped in one department but kept in another.”¹⁹

To overcome the objections of both unions and managements

¹⁷ Twentieth Century Fund, *How Collective Bargaining Works*, p. 660, New York, 1942.

¹⁸ Sumner H. Slichter, “Economic Conditions and Collective Bargaining,” *Collective Bargaining and Cooperation, Bulletin No. 8*, p. 14, University of Michigan, Bureau of Industrial Relations, Ann Arbor, Mich., 1938.

¹⁹ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 141, Brookings Institution, Washington, D. C., 1941.

to some or all of the above applications of seniority, the parties often agree to establish *occupational groups*. The jobs to be included in each group are determined by negotiation and all employees working on these jobs are considered to be part of a self-contained seniority unit. Usually such groups are set up on a plant-wide basis. In other words, departmental lines are often ignored. For example, even though there are toolmakers in several different departments, they would all be included in one seniority occupational group.

This type of seniority unit is frequently favored by management since it tends to cause less interference with production and fewer troubles in transferring men from job to job. As the National Association of Manufacturers has commented: "Seniority . . . operates most successfully within a unit in which skills are interchangeable. In other words, employees within the unit should possess skills sufficiently similar to permit them to perform efficiently in any job within the unit in the event that the functioning of seniority rules requires employees to be transferred to other jobs."²⁰

The negotiation of seniority occupational groups is not always an easy task. Good judgment and objectivity are required in determining the number of groups and the specific jobs to be included in each. In this process, even though they agree on the principle, the parties usually find themselves in conflict. In the eyes of management, too few groups will mean that dissimilar jobs will have to be brought together, thus reverting, on a smaller scale, to the disadvantages of plant-wide seniority and defeating the purpose of the occupational-groups plan. The union, on the other hand, may claim that the application of seniority is being unduly restricted if management requests what they consider to be too many groups.

Such conflicts of interest and viewpoint vary widely in severity. If employment is stable and lay-offs rare it is very probable that there will be much less disagreement than when recent or

²⁰ National Association of Manufacturers, Industrial Relations Department, *Seniority, Management Memo No. 1*, p. 12, New York, June 1946.

frequent lay-offs have made both parties sensitive on the whole subject of seniority.

It is also possible to apply seniority solely on a *job* basis. Obviously this is the most restrictive of all applications, and, as a consequence, it is seldom encountered in concerns where the employees are represented by a union.

In addition to these five types of seniority units, the parties may use some combination of these possibilities, and thereby meet the needs of the particular situation better. As an example, agreements sometimes provide for departmental seniority for semiskilled jobs but specify plant-wide seniority for the unskilled occupations. Moreover, in some plans of this type, "the skilled or semiskilled worker who is laid off from his regular job in accordance with departmental seniority may claim any unskilled job on the basis of his total plant seniority."²¹ Or, "in concerns where department seniority is the rule, men of a given period of service (five or ten years) may be given plant seniority."²² As an example, at one time in the B. F. Goodrich Company "an employee with five years or more company service credit could displace any employee with less than two years' service in his *division*, provided he could qualify for the work."²³

SENIORITY QUALIFIED BY OTHER CONSIDERATIONS

In the application of the seniority principle to the lay-off and recall of employees, unions typically insist that length of service be the sole criterion. On the other hand, management usually feels that seniority alone is too restrictive and that other criteria should also be used when selecting workers for lay-off and re-

²¹ Princeton University, Industrial Relations Section, *The Seniority Principle in Union-Management Relations*, p. 29, Princeton, N. J., 1939.

²² Sumner H. Slichter, *Union Policies and Industrial Management*, p. 117, Brookings Institution, Washington, D. C., 1941.

²³ Twentieth Century Fund, *How Collective Bargaining Works*, p. 661, New York, 1942.

call. A typical management viewpoint is that: "Modification of length of service, when properly related to plant operations, will permit management latitude to obtain an efficient work force without weakening the protection which seniority affords employees. Due consideration to factors other than length of service is also necessary to provide recognition of exceptional employees and to maintain incentives."²⁴

Although comprehensive statistics are not available, there is good reason to believe that from sixty to seventy-five percent of all labor agreements consider one or more factors other than straight seniority in determining the selection of employees for lay-off or recall.

Ability is the most commonly encountered limitation on length of service. It is also the most important. In addition to ability, however, other limiting factors are sometimes used. Among these are: skill, merit, performance, knowledge, training, physical fitness, number of dependents, family status, citizenship, employee's place of residence and other social factors. Many agreements contain from three to six of these items, which must be considered in selecting employees to be laid off or recalled. In these instances, management is groping for some means either of retaining people who are able to perform the jobs that are left after a lay-off, or for some means of keeping the most efficient or least troublesome employees. This philosophy obviously comes in conflict with the typical union's desire to have seniority the sole factor to be considered.

The extent of management's interest in qualifying seniority with ability should be in direct proportion to the number and complexity of the jobs in the seniority unit. Thus, in theory at least, if the unit is the job or occupation, it should not be necessary to consider ability at all since everyone performing the job should either be doing so satisfactorily or should be transferred or discharged. In this case, it may also be argued that those who have not held the job long enough to be proficient would

²⁴ National Association of Manufacturers, Industrial Relations Department, *Seniority, Management Memo No. 1*, p. 9, New York, June, 1946.

in most cases be low in seniority and would be laid off anyway. Likewise the same considerations should theoretically hold true in the case of occupational seniority groups, if they have been properly established. These theoretical expectations often hold true in practice when proper precautions are taken. For example, the authors have personally found very satisfactory one contract calling for lay-offs and recalls by seniority alone within carefully defined seniority occupational groups. This experience extended over a long period and included both major and minor lay-offs.

However, in the case of occupational groups that include a diversity of jobs, or a seniority unit consisting of the department, plant, or company it is almost imperative, in the average concern, that seniority be qualified by ability. Without this protection management is at a serious disadvantage. With it, on the other hand, another problem is virtually certain to arise—the problem of who shall determine ability and how. This usually brings up the question of merit rating.

On this topic, Heron makes the following very pertinent comment: "The union rejection of ability factors has been nominally based on disbelief in the validity of management's estimates of ability; on suspicion that relative ability was a camouflage for favoritism. Broadly, management has submitted to the inefficiencies of straight seniority because it has not developed objective measure of ability. Where such measures have been intelligently developed, they have been treated by labor with the same skepticism as the old formula: 'The foreman says Joe is the best man.' There are hopeful instances where unions have been invited to help in designing a plan for measuring relative ability. Where they have thus been assured of the fairness and objectivity of the plan, they have usually cooperated in its application as a counterbalance for strict seniority."²⁵

²⁵ Alexander R. Heron, "The Future of Collective Bargaining," *Personnel*, vol. 17, No. 4, pp. 230-231, American Management Association, New York, May 1941.

For a more detailed discussion of the problems of developing and installing a plan for measuring ability, see: Richard C. Smyth and Matthew

In those instances where a rating plan to measure employee ability is in effect, disputes or differences of opinion will inevitably arise between the union and management about the rating given one or more employees. Some managerial representatives feel that management's decision in this regard should be final. Others feel that management should make the original rating but that it should be subject to review under the grievance procedure. In some instances the parties have gone so far as to work out the ratings jointly. For example: "In some steel plants a committee of company and union representatives weighs employees' competencies and lengths of services, then prepares lists . . . of the order in which layoffs shall be made." Also, "some full-fashioned hosiery labor agreements lay down ability as the first requirement in determining promotions and lay-offs. When other things are equal, seniority determines. In a few hosiery plants, management and shop committees work out ability ratings together."²⁶

SENIORITY PREFERENCE FOR SPECIAL CATEGORIES OF EMPLOYEES

Basically employers and unions are influenced by the same motives when they request special seniority consideration for certain individuals or employee groups. Both sides are anxious to avoid excessive disruption of their operations through the loss of key personnel. Thus management typically wants to save from lay-off its versatile or highly skilled employees who may be needed as instructors, utility operators, or leaders in the preparations to resume production. Likewise, unions seek top seniority for stewards, grievance committeemen and local union officials. "This assures the union of agents available to handle grievances and collect dues even with a sharply reduced work-

J. Murphy, *Job Evaluation and Employee Rating*, Part II, pp. 167-237, McGraw-Hill, New York, 1946.

²⁶ Twentieth Century Fund, *Trends in Collective Bargaining*, p. 103, New York, 1945.

ing force, strengthens the bargaining position of these representatives, and in a sense compensates them for their duties.”²⁷

In the case of requests by management for seniority preference, there are several ways in which the arrangement may be set up:

1. By individuals. Here the names of the individual employees to be exempted are listed by agreement between the parties.
2. By jobs. Here certain jobs are exempted as the result of negotiation. No listing is made of the employees working on these jobs since all are automatically exempted, regardless of seniority.
3. By percentage. This is the more common procedure wherein the parties agree that a certain percentage of the employees may be retained by management at time of lay-off, irrespective of their seniority standing or the jobs on which they work. The proportions agreed upon usually range from five to ten percent.

Most unions dislike and fear management proposals of the types listed above. Their principal concern is over the possibility that the employer may play favorites or retain non-union members out of seniority order. They also recognize that such exemption plans are likely, when they are applied, to be the causes of serious internal dissension in the local union. This is particularly true if short-term non-union employees should happen to be retained out of order of seniority while long-term union members are laid off.

Even when agreement has been reached on exemption clauses, unions are usually highly suspicious, watching every transaction with an eagle eye for signs of managerial favoritism. As a result, those companies that have been successful in utilizing such provisions have done so by being careful not to abuse them. Alluding to one clause which permitted the exemption of

²⁷ Twentieth Century Fund, *How Collective Bargaining Works*, p. 617, New York, 1942.

ten percent of the employees, one management representative has expressed this point as follows: "We did not abuse the privilege. We exercised it in only one percent of the cases, and found that sufficient for our purposes."²⁸

Obviously it is greatly to an employer's advantage if he can negotiate some provisions for preferential treatment of key personnel. By so doing he can eliminate the principal disadvantage of straight seniority agreements, giving himself the protection he needs when reductions in the work force are necessary. In this connection, the comments in the preceding paragraph are very important. While the exercise of fairness and good judgment will tend to make exemption clauses a valuable aid to management, their abuse will undoubtedly lead to bitter union opposition.

In the case of union requests for seniority preference for stewards and other officials, management frequently agrees in principle because it can see some advantage to itself in stability in union representation. In the words of Princeton University's Industrial Relations Section, after surveying viewpoints on this issue:

Company executives who aim to establish cooperative relations with the union have apparently been willing to grant concessions in this respect either by formal agreement or informal understanding. From their point of view, it is advantageous for both parties to reduce the turnover of such union representatives. Management has a better opportunity of "educating the union" if it takes steps to encourage the continuity of the bargaining committees. As one company executive pointed out: "The longer a steward serves in an official capacity, the more responsible and reasonable he is apt to become."²⁹

While all this may be true, a management contemplating the granting of top seniority to union officials should take several

²⁸ American Management Association Personnel Series No. 79, *The New Pattern of Labor Relations*, p. 33, New York, 1944.

²⁹ Princeton University, Industrial Relations Section, *Seniority Policies and Procedures As Developed through Collective Bargaining*, p. 11, Princeton, N. J., 1941.

precautions that the privilege will not be abused. One of the most important of these precautions is to set forth specifically which officials are to be covered. Some unions have extensive hierarchies of officers whose functions may have little or no relationship to joint company-union interest. As a consequence it may be desirable to exclude sergeants at arms, trustees, sentinels, and the like from special seniority consideration even though they may be listed as officials. Care should also be taken in defining what top seniority for union officials means. Do some have top plant-wide seniority while others (such as stewards) have preference only in their own occupational groups or departments? Naturally this will depend upon the type of seniority unit agreed upon. The basic point, however, is that the *same* type of seniority preference need not necessarily be given to all. A further precaution to avoid misunderstanding is to stipulate that special seniority consideration shall apply only in so far as lay-off and recall are concerned, and only during the employee's term of office and also only if the employee is able satisfactorily to perform the available work.

TEMPORARY LAY-OFFS

Most concerns are subject to unexpected interruptions to production that vary greatly in severity. These include the breakdown of equipment, failure of a vendor to supply necessary parts, supplies, or components, or other unforeseen contingencies. Such occurrences may make it necessary to lay off temporarily some or all of the employees working on a given job or in a given department. Just how serious a problem this may be will depend a good deal upon the way in which the seniority provisions of the contract have been written. If no thought has been given to it, management may find it necessary to lay off one group of employees for whom there actually is work, and transfer others with greater seniority into their jobs. This might well require extensive re-training of employees. Obviously, if the interruption to production is only going to last for a few days there is little point in such transferring and re-training.

Worse yet in such a case is the fact that the resumption of full production may necessitate another round of transfers as the laid-off workers are recalled. To avoid the expense and the further interruption to production entailed in moving workers around under these circumstances, many companies have negotiated clauses stipulating that temporary lay-offs may be made without regard for seniority.

The big problem in formulating such clauses, of course, is to reach agreement on the definition of a temporary lay-off. The simplest approach is to phrase the definition in terms of a specified number of days, irrespective of the reason for the lay-off. This has the advantage of avoiding confusion and bickering when the time comes to apply the provision.

The following clause has proved workable and is fairly typical of many others encountered in industry:

Lay-offs not to exceed five (5) working days shall be considered temporary. In temporary lay-offs, the Company may deviate from the rule of seniority as established in this Agreement for the purpose of practical operation of the departments. Such temporary lay-off period may be extended to ten (10) working days by agreement between the Company and the Union. If lay-offs exceed ten (10) working days the Seniority provisions of the Agreement shall apply.

It should be noted that this clause contains no mention of limitations on the number of times per year the same employees may be temporarily laid off. As phrased, the clause permits an indefinite number of lay-offs up to five days in duration. It is evident that many unions would regard any such arrangement with suspicion were they not convinced that the employer would not take advantage of the union's willingness to provide the flexibility needed by him. As in the case of exemptions from seniority in permanent lay-offs, managerial honesty and fairness are essential. An employer can be sure that the union will begin to insist on serious limitations as soon as it becomes evident that loose temporary lay-off clauses are being misused. Such limiting demands, if pressed, will deprive the plan of its

principal value—the flexibility to adjust to unexpected, short-term contingencies.

NOTICE OF LAY-OFF

A good many labor agreements provide that employees shall receive advance notice of impending lay-off. A National Industrial Conference Board survey of 212 contracts, for example, discloses that 66 of the agreements (31 percent) contain such provisions. The length of the notice periods specified in these 66 cases ranged from four hours to two weeks. However, the great majority (73 percent) provided for 3 days of notice or less.³⁰

Unions request notice of lay-off for two principal reasons. The first is that employees need advance warning so that they may prepare for changed economic circumstances by husbanding their resources and looking for work elsewhere. The second is that the union's officials need time in which to check the impending lay-offs against seniority lists to ensure compliance with the terms of the contract before the laid-off workers leave the premises.

Management, on the other hand, frequently objects to contractual guarantees of notice of lay-off because of serious practical difficulties. Thus, when notice is given it is usually demoralizing in the shop. Production is adversely affected because those to be laid off are prone to stop doing what work they may have and interrupt other employees to discuss the situation. Likewise, permanent lay-offs are, in many cases, made necessary by circumstances beyond management's control, such as cancellations of contracts. Since the employer often receives no advance notice in such cases, he naturally feels that it is unfair to ask him to give his employees notice. This is particularly true where no productive work is available during the notice period.

³⁰ A. A. Desser, National Industrial Conference Board, *Studies in Personnel Policy No. 71, Trends in Collective Bargaining and Union Contracts*, p. 9, New York, 1946.

It is at this point that management often gets into a dilemma during negotiations. The union's representatives are quite likely to agree that it is unreasonable to insist that employees merely idle their time away in the plant when notice of lay-off has been given and no productive work is available. The additional proposal will then be made that the employer may give the workers *pay in lieu of notice* and lay them off at once.

Such a proposal obviously introduces an entirely new set of considerations into the bargaining picture. Although it is true that it resolves the problem of demoralization in the plant and makes it unnecessary to have people standing around with no work to do, it also constitutes a potentially serious addition to the employer's costs of operation. It is not surprising, therefore, that most managements balk at accepting the "pay in lieu of notice" concept on the grounds that it is actually a first step in the direction of the even more costly practice of severance pay.

Viewed objectively, it does not seem unreasonable to give employees advance notice of lay-off wherever it is possible to do so. However, there is a great difference between a contract clause which calls for mandatory notice or pay in lieu thereof and one which gives recognition to the fact that lay-offs are often due to conditions wholly or largely beyond management's control. Accordingly it is both logical and equitable for the employer to stipulate that notice of lay-off be given only if reasonably possible.

SHARE-THE-WORK PLANS

Not all unions favor the application of seniority rules when a reduction in force is necessary. Many of the older unions prefer to reduce hours and share the work instead of making lay-offs. "The needle trades unions, the boot and shoe workers, the textile workers, and the brewery workers rely mainly upon this policy."³¹ Also, industries such as building construction and

³¹ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 112, Brookings Institution, Washington, D. C., 1941.

coal mining "are marked by an almost complete absence of seniority provisions in their union agreements."³²

Many factors underlie this practice. Some of these industries are highly seasonal and have violent business fluctuations. Consequently, during periods of temporary recession both unions and employers prefer to reduce hours rather than make lay-offs in order to maintain the cohesion of the union on the one hand, and to provide an available labor supply for the employer on the other.

If lay-offs are prolonged share-the-work plans may also be adopted. "In the women's garment industry, for example, business mortality is so high that only a small proportion of the workers would find it possible to accumulate an appreciable amount of seniority. . . . By the end of each year, about twenty percent of the manufacturers and jobbers and about thirty-three percent of the contractors who were in business at the beginning of the year have discontinued. As a result, large numbers of workers are forced to seek new employment at frequent intervals. Naturally, they would be opposed to a seniority rule."³³

However, other unions regard share-the-work plans as being nothing more than share-the-misery plans. In some cases, before World War II, hours of employment were reduced to the point that the average employee's weekly income was less than he could have received on WPA. Obviously under such conditions the senior employees, who are frequently older men with more extensive family obligations, will advocate lay-offs on the basis of seniority to increase their own net incomes.

Unfortunately, there appears to be no happy solution to these problems. This is so because neither seniority rules nor share-the-work plans increase the number of man-hours of work available in an industry. They are both merely devices for apportioning the available work among the working force. Accord-

³² U. S. Department of Labor, Bureau of Labor Statistics, *Union Agreement Provisions*, Bulletin No. 686, p. 117, Washington, D. C., 1942.

³³ Sumner H. Slichter, *Union Policies and Industrial Management*, pp. 112-113, Brookings Institution, Washington, D. C., 1941.

ingly, as business declines in a specific concern or industry, some or all of the employees will inevitably suffer economic losses.

In recognition of the problems created by sharing the work without reducing the working force, or by making lay-offs without reducing the hours of work, many unions favor compromise approaches to the problem. These utilize some combination of both principles. "The most usual combination seems to be first to drop short-service employees (usually those with less than six months' or a year's service), then to divide work down to a certain point (usually down to three or four days a week), and finally to make lay-offs in accordance with seniority, possibly modified by ability. Particular conditions in particular industries, however, produce variations in this pattern."³⁴

This combination method of handling the problem seems to be developing as a trend, and is currently often encountered in labor agreements in the steel and rubber industries and in electrical and radio manufacturing.

SENIORITY AND PROMOTIONS

Many unions seek to negotiate clauses requiring that all promotions shall be made on the basis of seniority. Union leaders assert that this is to prevent union members from being discriminated against or to keep supervision from playing favorites.

Management, however, typically feels that it should retain the right to promote the best-qualified workers regardless of their seniority. The vice president of one company has said: "In our American way of life promotion should depend on an individual's effort, initiative, and ability."³⁵ Many other employers feel that seniority should be taken into consideration

³⁴ Sumner H. Slichter, *Union Policies and Industrial Management*, p. 136, Brookings Institution, Washington, D. C., 1941.

³⁵ *Constructive Employee Relations in Unionized and Non-Unionized Plants*, American Management Association Personnel Series No. 99, p. 17, New York, 1946.

when making promotions but that it should not be the primary factor involved.

Four basically different types of clause may be negotiated to cover the application of the seniority principle in cases of promotions. These are:

1. Promotions made solely on the basis of merit and ability as determined by management. In at least one such case the labor agreement negotiated by the parties provides that "an employee may not use his seniority to claim a higher skilled job than his regular occupation." If provisions of this type are grouped with those labor agreements in which no mention is made of promotions (and where it is obviously left up to management) this is the most common type of situation. Thus, in his analysis of 400 labor agreements, Slichter found 243 contracts (61.0 percent) that either did not mention promotions or specifically gave management the right to decide the question.³⁶
2. Another type of clause stipulates that "the senior employee shall receive the promotion provided he has the ability." This clause may appear reasonable at first glance but it is rife with possible dangers for management. As an example, consider the experience of a large oil company in this regard: "The original . . . agreement with the union contained a simple provision that the employer would follow the practice of promoting on the basis of length of service, provided the employee had the requisite ability to move into a higher job. In successive years this provision has grown into several pages of fine print which leave the employer practically no choice in making promotions. Seniority lists are everywhere available, and woe be unto the superintendent who moves up a man 'out of line.' When this is done because the man in line of seniority does not have ability, in the opinion of management, the decision is

³⁶ Sumner H. Slichter, *Union Policies and Industrial Management*, pp. 150-151, Brookings Institution, Washington, D. C., 1941.

invariably questioned. Knowing this, superintendents have only a choice of evils—to promote an incapable man, or to have a row with the union.”³⁷ The experience of the railroads is also of interest in this connection because it throws light on the importance of the phrasing of “ability” clauses. “When there are vacancies to be filled by promotion, seniority prevails, and the only merit consideration is a proviso, ‘fitness and ability being sufficient.’ ‘Sufficient’ meaning ‘good enough,’ the result impairs efficiency.”³⁸ In Slichter’s analysis of 400 contracts, to which reference has previously been made, this type of clause appeared 64 times, or in 16 percent of the agreements.

3. Another type of promotion clause, favored by many management representatives and by many impartial observers, provides that promotions will be based on ability as the principal criterion and that seniority shall prevail only when two or more employees are determined to be equal in ability. The governing principle here is that the promotion should go to the oldest of the best employees instead of to the best of the oldest employees. In examining this concept Dr. George W. Taylor comments: “Management’s chief objective should be the promotion of capable people. A clause specifying, for example, that merit, ability, or capacity shall determine who will be promoted, subject to seniority as a secondary qualification, is perfectly satisfactory.”³⁹ An interesting adaptation of this type of clause is found in the full-fashioned hosiery industry. When there is a vacancy to be filled by promotion “the five or ten employees in line for advancement who have the best records are jointly chosen. Seniority then determines who shall be

³⁷ Daniel T. Pierce, “How the Union Disillusioned Us,” *Factory Management and Maintenance*, vol. 104, No. 1, p. 96, January, 1946.

³⁸ Twentieth Century Fund, *Trends in Collective Bargaining*, p. 102, New York, 1945.

³⁹ George W. Taylor, “The Function of Collective Bargaining,” *Management’s Stake in Collective Bargaining*, American Management Association Personnel Series No. 81, p. 18, New York, 1944.

promoted. Neither employers nor employees question the advantages of the system.”⁴⁰ This type of clause was found in 42 out of the 400 agreements (10.5 percent) analyzed by Slichter.

4. The last category is promotions made solely on the basis of employee's seniority. Obviously this is the least desirable of the possible clauses from management's point of view as the organization would in time stagnate and the individual initiative and ambition of most employees, providing they did not resign, would be reduced to a low ebb. However, in spite of the disadvantages of the clause it was found by Slichter in 30 out of 400 labor agreements (7.5 percent).

The application of the seniority principle in promotions is not so common as in lay-offs or re-hires. “The reasons are not far to find. While the desire for job security is basic to nearly all workers, incentive for advancement is less common.”⁴¹ “Furthermore, the very application of seniority to lay-offs makes it important that it shall not be applied to promotions. The application of seniority to lay-offs inevitably weakens the incentives to efficiency because superior efficiency is no longer necessarily a protection against lay-off. With the fear of lay-off weakening as an incentive to efficiency, it is all the more important that the hope of promotion be retained as an incentive.”⁴² Consequently, as has been pointed out by one executive: “Employers would do well to examine the seniority clause with great care; otherwise they may find themselves in a situation where promotions in all standard operations must be made on length of service only; and with an argument on their hands every time an out-of-line promotion is made. Worst of all is the deaden-

⁴⁰ Twentieth Century Fund, *How Collective Bargaining Works*, p. 461, New York, 1942.

⁴¹ Princeton University, Industrial Relations Section, *The Seniority Principle in Union-Management Relations*, p. 16, Princeton, N. J., 1939.

⁴² Sumner H. Slichter, *Union Policies and Industrial Management*, p. 150, Brookings Institution, Washington, D. C., 1941.

ing hand of the seniority fetish on ambition and unusual capability.”⁴³

HOW SENIORITY IS CALCULATED

In a few instances management has requested that the seniority of all employees be calculated from the date when the union was first recognized by the company. However, since this adversely affects all employees hired earlier, a storm of opposition from the union is inevitable. It is not surprising, therefore, that such requests rarely find their way into contracts. The most reasonable and the most widely used method of calculating seniority is the date of the employee's original hiring.

Irrespective of what starting point is used for the acquisition of seniority, the parties must decide whether seniority shall be retained or accumulated during intervals when the employee does not or cannot work. The most common procedure, and the one that is fairest from the employee's point of view and simplest from the company's (since its calculation is so easy) is to permit the employee to accumulate seniority as long as he is carried on the payroll or the re-hire list. Thus, employees absent because of injury, illness, lack of work (while still on the re-hire list), or official leave of absence would continue to accumulate seniority.

Naturally the above is not the only way of handling this general problem. In some instances agreements may be negotiated providing for accumulation of seniority for some types of absence (such as injury or illness) and denying it for others (such as lay-offs due to lack of work—especially if employees are kept on the re-hire list indefinitely). These and various other compromise possibilities are usually the outgrowths of special problems or convictions at the local level. Generally speaking, however, the tendency is for seniority to be allowed to accumulate under most conditions of approved or justified absence.

⁴³ Daniel T. Pierce, *op. cit.*, p. 97.

HOW SENIORITY IS LOST

In addition, careful thought should be given to defining the specific conditions under which an employee will lose his seniority.

Most agreements specify that an employee will lose seniority if he quits, is discharged, exceeds a leave of absence, or fails to return to work when called back by the company. As long as only these items are included, little difference of opinion will be likely to arise between the parties. Where there is any it will normally be over the occasional case where an employee has a good excuse for failing to return to work after a leave or after being called back to work. Although it is often hard to define a good excuse, such problems are not usually of major import.

However, much more serious controversy between the parties is apt to arise over the issue of termination of seniority after a prolonged lay-off. Most managements feel that after a reasonable period, say three months to a year, the employee should be dropped from the re-hire list and should lose all seniority. The objective, of course, is to cut down the size of the seniority re-hire list and give the employer a chance to hire former employees on a merit basis when building back a larger work force. Many management representatives feel such a procedure is justified on the grounds that skills tend to deteriorate when workers have been laid off for long periods of time, thus requiring retraining if recall is in order of seniority. It is also argued that, if employees retain or accumulate seniority for an indefinite period of time while laid off, the more aggressive and superior workers will find employment elsewhere, thus leaving only the less desirable individuals available for re-hire.

In spite of such contentions, unions frequently press for indefinite seniority for laid-off employees. The basic argument usually is that employees have earned the seniority and that it is a form of equity which should not be taken away from them. In addition it is maintained that one or two years on a re-hire

list is not long enough to carry many individuals through a severe depression—when seniority means the most.

In actual practice, most labor agreements stipulate that laid-off employees shall either retain or accumulate seniority for from six months to a year. The range of such provisions is from three months up to as long as two years.

There are also some few cases in which various compromise plans have been worked out, apparently in response to strong union pressure for indefinite seniority for laid-off workers. Thus, some agreements provide that an employee retains his seniority indefinitely if he writes the employer at stated intervals, such as every three months, and "registers," i.e., indicates his desire to return to work. In other cases provision is made that long service employees, such as those with ten or more years of seniority, shall retain their seniority indefinitely if laid off, while those with shorter periods of service are not so treated.

PROBATIONARY EMPLOYEES

Management generally feels that seniority rules should not apply in the case of newly hired employees until they have successfully passed a probationary period. Hill and Hook have expressed this point as follows: "Each contract should include a reference to probationary employees—new employees who may be exempt from the application of seniority provisions until management has had enough time to determine whether the employee is sufficiently satisfactory to be retained."⁴⁴

The reaction of unions to the probationary period varies, although typically they do not appear to oppose the general principle. "Most of the newly organized unions favor a short probationary period. Some of them claim that thirty days is sufficient time for an employer to judge the qualifications of a new worker, and that a longer period merely gives the company more time to find out how active a union man he may become. Another factor is that new employees are often reluctant to join

⁴⁴ Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, p. 116, McGraw-Hill, New York, 1945.

the union until they attain permanent status, although they may be eligible for membership after the first month of employment. It appears, then, that one reason for certain unions' insistence on a short probationary period is the fear of discrimination on the part of management and the desire to achieve 100 percent membership. On the other hand, when union recognition (security) is no longer a primary issue, union leaders often favor a very long probationary period."⁴⁵

In practice probationary periods range from thirty days to eighteen months, with the majority of contracts providing for sixty days to six months.

Usually such clauses specify that management has the right to discharge or lay off the employee at its option during the probationary period and that the union will not process grievances for such employees. Sometimes, however, the agreement provides that the union may handle the grievances of probationary employees where it is alleged that there was discrimination because of union activity.

A representative probationary clause which includes this latter type of provision follows: "Employees shall be regarded as probationary employees for the first sixty (60) days of their continuous employment. The Company may lay-off or discharge probationary employees without limitation by the terms of this Agreement and there shall be no responsibility for re-employment of probationary employees if they are discharged or laid off during this period, except that the Union reserves the right to appeal any such case on the grounds of discrimination for Union membership or activity. Such claims must be supported by written evidence at the time the grievance is filed."

SENIORITY AS APPLIED TO SUPERVISORS

The practice of promoting from within is widely recognized by employers as a healthy and constructive phase of industrial

⁴⁵ Princeton University, Industrial Relations Section, *Seniority Policies and Procedures As Developed through Collective Bargaining*, p. 10, Princeton, N. J., 1941.

relations. This is particularly true for supervisory jobs and, as a result, assistant foremen or foremen (or the equivalent in terms of level in the managerial hierarchy) are customarily superior production workers or set-up men who have been up-graded.

In so far as collective bargaining on seniority is concerned, two principal questions must be dealt with in such cases. These are: (1) What part shall seniority play in the selection of rank-and-file workers for supervisory jobs? (2) What shall be the seniority status of supervisors who are demoted back to rank-and-file jobs?

On the first question, since supervisory positions are generally excluded from the bargaining unit, the reaction of most managements is that no restrictions should be imposed on them in selecting their own representatives. Thus, even though seniority may be a factor in the case of promotions *within* the unit, these employers contend that ability should be the sole consideration where promotion is to a job *outside* the unit. This position is certainly a logical one and it is readily justified on the grounds that supervisory jobs are too important to the welfare of both parties to be filled on any basis other than merit and ability.

Where an employer agrees to recognize seniority as a factor in promotions, whether the individual is qualified or not, there is a danger that supervisory positions may be included because of loose phrasing of the applicable clauses, even though this result was not intended. The simplest way to prevent this (short of having no clause at all on promotions) is to specify in so many words that the provisions cover only jobs within the unit. Indeed, where the seniority plan is based on occupational groups, some managements have gone one step further and have negotiated clauses that confine the contract provisions on promotions to employees within the occupational group in which the vacancy exists. This arrangement, of course, also conclusively excludes jobs outside the unit.

As already mentioned, management also faces the problem of

seniority when supervisory personnel are demoted. This is a very important consideration. In the words of Hill and Hook:

"Every management owes its representatives the obligation of protecting their seniority and of giving them a seniority status superior to that of production employees, if reduced production results in supervisory employees being put back on production work. Otherwise, employees best fitted for the job may refuse to take the supervisory jobs, if permanent loss of seniority is involved, and if there is the possibility of their being returned to production work where they may be subject to lay-off. Supervisory employees are, in general, the oldest and most skilled. They are probably the most important asset that most managements have. Their morale is properly one of management's chief concerns. It would be most unfortunate to be forced to lay off supervisory employees because management has not been sufficiently foresighted to avoid a hiatus in seniority." ⁴⁶

A well-designed clause covering this situation would permit management to put the supervisor back on any job in the bargaining unit that it wished and not merely restrict the supervisor to the job he held prior to his promotion. That job may no longer exist when the demotion takes place or management may find it desirable to place the individual elsewhere in order to round out his background and make him a more valuable employee. In addition, the clause should give the demoted supervisor seniority credit for all time spent as a representative of management.

SENIORITY LISTS AND RECORDS

Seniority lists and records should be accurate, up-to-date, and available for review at all times. That they should be accurate and up-to-date is agreed by both management and labor. But some managements are reluctant to show seniority lists and

⁴⁶ Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, p. 191, McGraw-Hill, New York, 1945.

records to employees or to union representatives. Such an attitude is unfortunate. It is difficult to see how sound labor or industrial relations can be developed if one of the parties involved is denied access to the records.

However, such short-sightedness is the exception rather than the rule. In most companies, seniority lists are either posted in the respective departments, or copies are furnished the union, or, as in the case of the Westinghouse Electric Corporation, seniority record boards are maintained in the employment department where "they may be consulted by any employee who wishes to check on his status" and where they are also "used as a basis of review by the foreman or the union representative."⁴⁷

⁴⁷ T. O. Armstrong, "Seniority Record Boards," *Personnel*, vol. 18, No. 4, p. 239, American Management Association, New York, January, 1942.

XI

WAGES, FRINGE ISSUES, AND HOURS

THE fundamental wage policy of trade unions is to get higher wages for their members whenever possible. "‘More and ever more’ epitomizes organized labor’s wage aims."¹

WAGE POLICIES OF UNIONS

An appreciation of the quasi-political nature of a union makes one realize that such a policy is perhaps inevitable. Union officials, when running for office or when conducting an organizing campaign, almost invariably promise "more" to the group involved. As Selekman has observed: "Bids for union votes, as in all democratic politics, are usually couched in terms of

¹ Twentieth Century Fund, *Trends in Collective Bargaining*, p. 63, New York, 1945.

promises—the concrete, economic gains the candidate will bring to these who vote right.”² Understandably such promises attract most wage earners, since it is doubtful if the bulk of those whose incomes are primarily wages or salaries are entirely satisfied with their economic status. Most people want a higher standard of material living.

It is obvious that Joe Curran was politically on sound ground when he said that the maritime workers wanted more pork chops, and then more pork chops.

In justifying demands for higher wages labor has pressed its case on both social and economic grounds. Labor's more articulate leaders have coined slogans which carry tremendous appeal not only to rank-and-file unionists but also to many elements of the general public. Thus, we find that over the past several decades, labor has demanded, “a living wage,” “a fair wage,” “a saving wage,” and “a cultural wage.” Surely these are standards of living that all men hope to achieve for their families. Consequently, when labor's demands are expressed in such terms they tend to receive wide-spread support. Many individuals vividly recall the depression years of the early 1930's and readily respond to the “social justice” type of appeal.

However, in recent years unions have tended more and more to supplement such general appeals with concrete economic arguments in justifying their wage demands. Through their research departments and through various “liberal” friends in some universities and in public life, labor organizations have shaped and publicized economic theories which justify their aspirations. It is not the purpose of this book to attempt to analyze the various conflicting economic wage theories rampant in our society today. Nevertheless, brief mention of some of organized labor's contentions is necessary to comprehend the fundamental wage policies of unions.

In presenting its economic theories to bolster wage demands, organized labor is both flexible and opportunistic. Thus, in a

² Benjamin M. Selekman, “Wanted: Mature Labor Leaders,” *Harvard Business Review*, vol. XXIV, No. 4, p. 410, Summer, 1946.

period of inflation and rising prices, the argument will be advanced that wage increases are necessary to offset the increased cost of living and to sustain consumer purchasing-power. In a period of depression or deflation, on the other hand, labor will argue that wage increases are necessary to increase consumer purchasing-power and thus regain prosperity. Or emphasis may be put on "ability to pay," with citations of the "huge" profits management is reaping. Such arguments are turned on and off like faucets to meet the exigencies of the moment.

Labor also often argues that it is producing more, and should therefore receive wage increases in proportion. "As early as 1920 the railroad unions were demanding that their wages be based on 'increased productive efficiency'." ³

One of labor's wage theories with far-reaching social implications—strongly held by many unionists and as strongly opposed by most employers—is the concept that labor should receive a larger proportion of the national income. Thus Golden and Ruttenberg indicate that a prime objective of collective bargaining is the redistribution of the proceeds of production,⁴ and Solomon Barkin says: "We not only want more wages, but we also want a larger proportion of the national income. We want it because that is the only way we are going to have a balanced economy." ⁵

Obviously organized labor's principal wage policy is "more," both in terms of higher wage rates and in terms of a larger share of the national income.

WAGE POLICIES OF EMPLOYERS

In one sense, management's wage policies may be termed the "opposite" of labor's. Thus, where a union wants to *gain as much*

³ Lois McDonald, *Labor Problems and the American Scene*, p. 353, Harper, New York, 1938.

⁴ Clinton S. Golden and Harold J. Ruttenberg, *The Dynamics of Industrial Democracy*, p. 151, Harper, New York, 1942.

⁵ Solomon Barkin, "National Collective Bargaining," *Personnel Journal*, vol. 25, No. 5, p. 151, November, 1946.

as possible, an employer may be said to want to *give as little as possible*. This, however, is not an entirely fair or correct characterization. Whereas unions are free to base their demands largely on general economic and political considerations (such as "pattern" demands), employers are forced to reply on the basis of their own individual situations. In view of this, it is obvious that management's role will often of necessity have to be one of defense rather than offense. When to this is added the fact that unions characteristically present exorbitant demands which they fully expect to scale down in the course of bargaining, it becomes obvious that management's role could hardly be anything other than defensive in nature. Nevertheless, it is extremely naive to visualize the wage policies of most employers merely as a struggle of the "haves" to keep from giving to the "have-nots." The plain fact is that the employer has a far more complex problem than the union when it comes to determining what his policies are to be. His must be a tailor-made job. He cannot and should not rely on generalities or emotions because these are the factors that may divert him from his key task of determining how far he can go in bargaining without undermining the economic health of the enterprise.

Sweeping statements by employers to the effect that "we can't afford to give them a cent" or "we will close the plant before granting a wage increase" are seldom based on facts. Although possibly good for blowing off steam, they are usually quite ineffective as far as the union is concerned. They are also quite foreign to the normal practices encountered in well-operated businesses. The executive who alters the selling price of his product only after a careful review of market analyses and of cost and financial data can hardly justify any different approach to wages.

Negotiations between the union and the employer are obviously of prime importance to the welfare of the business. Accordingly, they should be prepared for and conducted in the same businesslike manner in which a successful purchasing department negotiates with vendors.

Like any successful buyer, management needs facts in order to formulate and use a realistic and meaningful wage policy. The facts required in this instance fall into five categories:

1. *The current financial condition of the organization.* Under our economic system it is essential that a business operate at a reasonable profit. Only profitable organizations can survive and afford either to grant wage increases or to continue to pay high wages. If business is good, if reasonable profits are being earned, and if satisfactory financial reserves have been accumulated, management is typically prone to adopt a generous wage policy. Where profits are low or non-existent, there is, of course, an entirely different situation. The marginal business enterprise is simply not in a position to disturb the precarious balance of profit and loss by granting any monetary concessions which would increase its costs.

Between the two extremes outlined above there are many intermediate positions. Each employer must carefully determine just where he stands if he is eventually to arrive at a safe set of "bargaining limits" on questions of money.

2. *The future economic expectations of the concern as a part of an industry.* Even though profits may be high today, management must always keep the future in mind when shaping its policies. There may be technological problems concerning processes, distribution, products, patents, or financing which affect the company itself or its competitors within the industry. If this is the case, careful attention should be devoted to the possible effects of such factors.

3. *The general economic health of the industry and the economy as a whole.* Consideration should be given to whether or not the demand for the products of the industry is increasing or declining. Likewise, both the present and probable future condition of the general economy should be contemplated. Periods of expansion, easy credit, rising prices, and enlarging inventories usually result in higher wages, while periods of falling security values, contracting inventories, and falling prices tend to force wages down. In determining its wage policy a

specific concern should analyze, as far as possible, these factors for the future.

4. *Community and industry wage and salary relationships.* Most concerns are in competition with the balance of their industry for profits and with other firms in the same area for most categories of employees. In the average industry it is rare to find any company that can afford to ignore the general wage and salary levels and trends of the industry in shaping its own wage policies. Likewise, the wages and salaries paid by others in the same community are important. Even though there may be no other firms in the same lines of endeavor in the area, the various employers are often in competition with one another for desirable employees, if only to replace those lost due to labor turnover. Rates of pay desirable to applicants are obviously of importance in this type of competition.

5. *The demands of the union.* The union's monetary demands must, of course, also have a prominent place in any listing of factors affecting management's determination of wage policies. Such demands are usually both tangible and substantial. They provide the basis for a realistic assessment of approximately what the union expects; this of course normally being a good deal less than what it originally demanded. Once a reasonable idea has been gained of what the union actually expects to get, the problem then becomes one of determining how far to go in meeting the union's anticipated settling point. It is here that the types of factual data previously listed necessarily come into

There is no doubt that the company which has made and analyzed community and industry wage surveys, which knows its present and probable future profit positions, and is aware of current economic trends in the industry and the country as a whole, is certainly far better able to determine a sensible wage policy than a company which does not have the facts and does not know how it stands in relation to its competitors. In addition, such facts and analyses can often be used very effectively in countering union demands and arguments.

EFFECTS OF WAGE BARGAINING

Hourly rates of pay have always been high in this country. The following quotation gives an early and very graphic representation of this: "A colonial treasurer of the Virginia Colony declared, about 1625, that the wages paid there were 'intolerable' and 'much in excess of the sum paid to the same class of persons in England.' In 1633 Governor Winthrop, of the Massachusetts Bay Colony, noted that the 'excessive rates' charged by workmen 'grew to a general complaint' which called for legislative action."⁶

Besides having started high, rates have also increased greatly over the years. The hourly wages of non-agricultural workers, for example, rose some 900 percent between 1840 and 1940, and since 1940 there has been a further substantial increase.

Just how much of the responsibility for all of the above is due to the efforts of unions in wage bargaining is difficult to determine. On the other hand, certain limiting factors are very clear. First, and most obviously, there were no unions in the early days of our history. Later, during much of the 1840-1940 period, unions were, relatively speaking, quite weak and ineffectual. Furthermore, during most of this time we were in an expanding economy, due to the development of vast natural resources, the influx of foreign capital, and the perfection of many important inventions. At the same time there was competition for labor and as a consequence, in spite of heavy immigration, hourly rates of pay rose almost constantly.

It is clear that unions have only fairly recently come to play any really significant role in the determination of the country's wage levels. At present, with some 14.8 million wage earners under collective-bargaining agreements at the beginning of 1947, organized labor is very powerful, not only because of its direct effect on wage levels but also because it exerts a strong

⁶ U. S. Department of Labor, Bureau of Labor Statistics, *History of Wages in the United States from Colonial Times to 1928*, Bulletin No. 604, p. 7, 1934.

indirect upward push. This is exemplified whenever employers give non-union employees higher rates as the result of increases that have been granted to union workers. This is currently very common, and, while it tends to narrow the differential between the rates of union and non-union workers, it is nevertheless due to union wage bargaining.

In addition, there are three supplementary generalizations which may serve to throw further light on the effects of wage bargaining:

1. *Unions have obtained higher wages for union labor than is paid to non-union labor.* As Dickinson observes: "The evidence shows clearly enough that union hourly wages tend to be higher than non-union, in the same trade and area."⁷

Specific instances illustrating this point are quoted by Leven who cites the example of union bricklayer average hourly rates of \$1.35 and average hourly rates for non-union bricklayers of \$0.97. Likewise, union rates for common laborers of \$0.63 and non-union rates of \$0.42.⁸

Further substantiation is found in the surveys conducted by the Bureau of Labor Statistics and reported in the Monthly Labor Review. One such analysis of the Electric Light and Power industry indicated that wage rates were about eleven percent higher in the union than in the non-union systems.⁹

2. *Collective bargaining has resulted in a steadying of wage rates.* Typically union wage rates are fixed for the duration of the labor agreement. In the past few years, largely as the result of inflationary trends in the economy, unions have tended to seek the inclusion of wage-reopening clauses¹⁰ in contracts.

⁷ Z. Clark Dickinson, *Collective Wage Determination*, p. 56, Ronald Press, New York, 1941.

⁸ Maurice Leven, *The Income Structure of the United States*, Brookings Institution, Washington, D. C., 1938.

⁹ U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, vol. 63, No. 3, p. 377, September, 1946.

¹⁰ Such clauses may permit either party (or only the union, although this is unwise from management's point of view) to reopen the issue of wages for further negotiations during the life of the contract.

However, in periods of normal business activity, wages are for the most part negotiated when the entire contract comes up for negotiation. Since most labor agreements run for one or two years it is obvious that, at least in so far as concerns the individual employer, the price of labor is stabilized by collective bargaining.

Another type of stabilizing influence—and one which greatly worries many managements—is the well known one-way-street philosophy of unions regarding negotiated wage structures. This is the strong reluctance of unions to agree to wage reductions. While it is true that wage cuts were negotiated with some unions in past major depressions, such as that endured by the country in 1932, it must be recognized that at that time organized labor was relatively impotent as compared to its current strength. Facing a labor movement that is four or five times larger than formerly and that has far greater financial resources, management will undoubtedly find the negotiation of wage reductions even more difficult in the future than has been the case in the past. This is in part substantiated by the fact that in some past business recessions the average of union wage rates did not go down at all.

3. *Collective bargaining has not increased labor's share of the national income.* It has already been pointed out that collective bargaining has tended recently to raise all hourly rates and that union rates of pay are generally somewhat higher than non-union rates of pay for the same occupation. These are positive accomplishments. However, there is also a negative side, since there appears to be no evidence that collective bargaining has raised labor's share of the national income. The Twentieth Century Fund observes: "Hard times and 'prosperity eras' have come and gone. National income has climbed peaks and tobogganed into valleys on the statisticians' charts. Prices have risen and fallen. Living costs have fluctuated. Wage rates have risen at times steadily, at others microscopically. Union organization has had periods of great activity and of severe loss of membership. Union bargaining power has waned and waxed again. . . . Despite all these changes, which include many un-

predictables, the proportion between labor's income and the national income has remained virtually the same."¹¹

Through its failure in this respect, organized labor has not as yet achieved one of its two fundamental wage aims. However, this does not mean that unions have abandoned the effort. Far from it. The concept of securing a larger proportion of the national income is particularly appealing to "leftist" or "liberal" elements in the labor movement and this objective will undoubtedly continue to rank high on their agenda.

WAGE LEGISLATION

Efforts to control wages by legislation are not all of recent origin. Six hundred years ago the Statute of Laborers was promulgated in Great Britain because of the scarcity of labor following the devastating plague called the Black Death. The purpose of this legislation was to hold down rates of pay and prevent laborers from receiving wage increases as the result of the scarcity of persons available for work.

In this country efforts were made in 1630 to control maximum wages. Plymouth Colony and the Massachusetts Colony both passed laws establishing a maximum rate of pay for various occupations.¹² Although both attempts proved unsatisfactory, Virginia also made the same unsuccessful experiment twenty years later.¹³

By the latter part of the nineteenth century economic and social thinking had changed a good deal. Attempts to legislate wages were no longer concerned with imposing *maximum* rates but sought rather to establish *minimum* rates of pay.

"In its modern form, minimum-wage legislation originated in Australasia, where New Zealand in 1894 gave its district

¹¹ Twentieth Century Fund, *Trends in Collective Bargaining*, p. 62, New York, 1945; also see: Z. Clark Dickinson, *Collective Wage Determination*, p. 183, Ronald Press, New York, 1941.

¹² U. S. Department of Labor, Bureau of Labor Statistics, *History of Wages in the United States from Colonial Times to 1928*, Bulletin No. 604, p. 9, Washington, D. C., 1934.

¹³ *Ibid.*, p. 11.

conciliation boards power to prevent sweating by setting minimum rates and Victoria in 1896 adopted independent minimum-wage legislation. Both the British and American systems have followed to an extent the model established there."¹⁴ In 1909 the British inaugurated their first wage boards to determine legal minimum wages in specific industries and subsequently extended the system.¹⁵

In this country early state minimum-wage laws (enacted from 1912 to 1923) were declared unconstitutional. Fearful of this result the authors of these laws had only attempted to cover minimum wages for women (and in some cases minors) under the guise of protecting their health. However, in 1937 the Supreme Court reversed itself when it had before it the Oregon minimum-wage law.¹⁶ Today the majority of states have enacted minimum-wage legislation.

In addition to the various state enactments the two principal federal laws affecting wages in this country are the Walsh-Healey Public Contracts Act and the Fair Labor Standards Act.

The Walsh-Healey Public Contracts Act (June, 1936) covers both males and females and sets forth certain basic labor standards for work done on United States Government contracts exceeding \$10,000 in value.¹⁷ The act contains provisions primarily covering overtime, safety and health, child labor, and minimum-wage rates. "The Secretary of Labor is authorized to issue minimum-wage orders on the basis of the prevailing minimum rates in the particular industry. Such minimum-wage determinations are issued by the Secretary upon the recommendation of a Public Contracts Board after a public hearing of the interested parties."¹⁸

¹⁴ H. A. Millis and R. E. Montgomery, *Labor's Progress and Some Basic Labor Problems*, p. 280, McGraw-Hill, New York, 1938.

¹⁵ Z. Clark Dickinson, *op. cit.*, pp. 468-469.

¹⁶ *West Coast Hotel v. Parrish* 300 U. S. 379.

¹⁷ Laborers and mechanics on public construction work (not included under the Walsh-Healey Act) are covered by the Bacon-Davis Act, the Eight Hour Law (actually a group of laws) and the Anti-Kickback Act.

¹⁸ U. S. Department of Labor, Division of Labor Standards, *A Guide to Labor Legislation*, Bulletin No. 66-A, p. 12, Washington, D. C., 1944.

The Fair Labor Standards Act (June, 1938) covers large numbers of employees engaged in interstate commerce or the production of goods which will eventually be moved in interstate commerce. Actually, the Act covers many more employees than is at first realized since the courts have been very liberal in interpreting interstate commerce. Thus in one case a small newspaper whose circulation included about forty copies which were mailed out of the state was found to be engaging in interstate commerce,¹⁹ and in another case employees of a local window cleaning company were found to be covered by the Act since they cleaned the windows of a manufacturer whose product was sold in interstate commerce.²⁰

The principal features of the Fair Labor Standards Act cover minimum wages, overtime, waiting time, child labor provisions, pay deductions, and homework. As in the case of the Walsh-Healey Act certain categories of employees are exempt from the provisions of the Act.

OTHER ECONOMIC DEMANDS OF UNIONS

Prior to World War II, unions were primarily interested in basic wage-rate increases when formulating their economic demands. However, with the advent of the wage-stabilization program during the war, they quickly turned to the so-called "fringe" items such as paid vacations, paid holidays, night-shift premium, and welfare plans, in order to gain monetary advances which they could not achieve in the form of increases in basic wages.

The success of some unions in securing such fringe demands during the war years has created a problem for all unions. Since such items are popular with employees, no union or union leader can now afford to fail to press hard for such additional bargaining "plums." Thus, postwar union conferences and conventions find such important labor organizations as the United Auto-

¹⁹ *Mubie v. White Plains Co.*, decided February 11, 1946.

²⁰ *Martino v. Michigan Window Cleaners Co.*, decided February 4, 1946.

mobile Workers, CIO, the International Association of Machinists, the Oil Workers' International Union, and the United Rubber Workers determined to press management for a guaranteed annual wage; an employer-financed social-security program providing benefits in the event of sickness, disability, and death, plus maternity, hospital, surgical, and medical care for the worker and his family; an adequate retirement program to supplement present benefits under the Social Security Act; night-shift differentials in all contracts; a thirty-six hour work-week without reductions in pay; fifteen days' sick-leave annually; pay for six holidays not worked; and a cultural standard of living guaranteed by an adequate annual income.

Obviously, all such fringe items cost substantial sums of money. In companies where labor costs account for a high proportion of the sales dollar, or where there is a low profit margin, the cost of this type of union demand might well represent the difference between profit and loss. In view of this, and before making any decisions, management would be well advised to review the fiscal position of the concern and industry and the extent to which such demands have been granted in both the industry and the area. Basically, no employer can forget that the various fringe items, if granted, will represent a portion of the cost of doing business.

Management should also remember that, once such items are granted, it is practically impossible to negotiate them out of a labor contract. Both employees and unions quickly assume that vacations, night-shift premiums, and the like are among the basic rights of labor, and may even prefer, if it is necessary in a last ditch fight, to reduce basic wage rates in order to maintain the other items.

VACATIONS

The practice of granting vacations with pay was voluntarily started by management but for many decades was applied almost exclusively to salaried employees. In 1886, The Westinghouse Electric and Manufacturing Co. started one of the

earliest-known vacation plans for office employees. Vacation plans for salaried workers were rapidly extended over the years and by 1943 a government survey based on a sample of 446,779 office employees indicated that ninety-seven percent (432,940 persons) were included under paid-vacation plans.²¹

Organized labor, until fairly recently, felt that vacations were "gratuities" and was not interested in negotiating such provisions. The early position of the Typographical Union and the Pressmen's Union was typical of that held by most labor groups. They maintained "that they were selling the skilled labor of their members on a price basis; that their primary objective was to raise wages and lower working hours; and that vacation provisions were unnecessary."²²

However, with the passage of time some employers voluntarily adopted vacation plans for their hourly-paid employees or negotiated such provisions with some unions. By 1935 the National Industrial Conference Board found that 17.9 percent of the companies it surveyed at that time had vacation plans for hourly employees.²³ Although the older craft unions, for the most part, had been uninterested, the newer industrial unions in the mass-production industries eagerly sought vacation plans. Largely as the result of their demands, vacation provisions for hourly employees were in effect in 46.4 percent of the companies surveyed by the National Industrial Conference Board in 1939, and by 1945 80 percent.²⁴ Obviously, the question is no longer whether paid vacations will be granted in collective bargaining. The more pertinent problem now is usually whether the existing plan shall be liberalized.

In negotiating a vacation plan four fundamental points must

²¹ U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, vol. 60, No. 1, p. 94, January 1945.

²² Twentieth Century Fund, *How Collective Bargaining Works*, p. 84, New York, 1942.

²³ C. E. Payne, "Trends in Company Vacation Policy," *The Conference Board Management Record*, vol. 2, No. 4, p. 37, National Industrial Conference Board, New York, April, 1940.

²⁴ A. A. Desser, *Trends in Collective Bargaining and Union Contracts*, No. 71, p. 8, National Industrial Conference Board, New York, 1946.

characteristically be covered. These are: (1) The length of the vacation; (2) Calculation of vacation pay; (3) The time when the vacation may be taken; (4) Determination of who is eligible to receive a vacation.

1. THE LENGTH OF THE VACATION

Under various plans vacations range in length from one day to four weeks. However, by far the most typical arrangement provides one week after one year of service and two weeks after five years of service. This is the famous "one-for-one, two-for-five" plan ordered during World War II by the National War Labor Board in many dispute cases. Its current popularity is, of course, largely due to the NWLB's influence.

A variation of this type of plan, usually requested by the unions once the basic plan has been secured, is the pro-rating of benefits for employees with two, three, and four years of service. Demands may also be made for less than a week's vacation for those with less than a year's service. Finally, if the concern has many old timers, demands will usually be forthcoming for more than two weeks' vacation for those who have been with the company for more than five years. All three of these forms of liberalization are current trends, the latter being the most significant.

2. CALCULATION OF VACATION PAY

Vacation pay is sometimes figured on the basis of a percentage of the employee's earnings during the year previous to the official calculation date. This method is advantageous to the employee in times of continuous employment when he is able to work overtime or when he has high earnings under a wage-incentive plan. It is disadvantageous to the employee if extensive illness or frequent or severe lay-offs have been encountered during the previous year. Percentage plans have not been widely adopted, accounting for only twelve percent of plans surveyed by the National Industrial Conference Board in 1947.

By far the most common method of calculating vacation pay is that of multiplying the employee's base or earned rate by a

specified number of hours, usually forty to forty-eight, depending on the length of the scheduled workweek. The base hourly rate is most commonly used for this purpose, with the addition of night-shift premium and incentive and overtime earnings in some cases. Where base rates are used, pay may be calculated on the basis of the rate in effect at the time the vacation is taken or on some fixed date negotiated by the parties. Where additional earnings are included in the calculations it may be necessary to provide for a "computation period" of several weeks' duration so as to permit the accumulation of reasonably accurate data on employees' average earnings in excess of base rates. In some cases, of course, averages are computed for the entire year.

3. THE TIME WHEN THE VACATION MAY BE TAKEN

Vacations are generally taken in the summer months, although longer vacations are sometimes split, part being taken in the summer and part in the winter. On the Pacific coast there is a noticeable trend away from seasonal restrictions.

All employees may take their vacations at one time or they may be staggered throughout the year. Many companies shut down for an annual inventory near the end of their fiscal year and prefer that as many employees as possible take their vacations then, both to get them out of the way and to provide an income for the employees during the shutdown. Other concerns do not close down for inventory purposes and feel that it is simpler merely to stagger vacations during an extended vacation period.

In some cases vacations are scheduled on the basis of employees' seniority and in other cases at management's discretion. If the plant is to be shut down to permit vacations to be taken, management should certainly retain the right to decide when this shall be done, with the understanding, of course, that employees will be notified far enough in advance to permit them to make satisfactory personal plans. If the stagger system of scheduling vacations is used employees and supervisors will usually not find it difficult to agree on vacation schedules that will cause a minimum of interference with production.

4. DETERMINATION OF WHO IS ELIGIBLE TO RECEIVE A VACATION

It is important that the labor agreement clearly specifies which employees are eligible to receive vacation time and pay. All too frequently contracts are vague and ambiguous on this essential point.

Whether or not employees on leave of absence, or those who have quit, or have been discharged, or laid off will receive vacation pay depends in large part upon the extent to which the typical union philosophy regarding vacations has prevailed. Most unions argue that vacations are a right which employees have earned. Thus, even the employee who is discharged for cause is said to have earned his vacation pay. However, the typical management viewpoint is that vacations are granted to employees to permit them to rest up for the coming year's work. The extent to which these respective philosophies prevail is somewhat indicated by the following observation:

Whether the employee who leaves a company before taking his annual vacation is entitled to vacation pay depends primarily on what interpretation the company places on its own fundamental purpose for granting paid vacations. One out of every three companies in last year's study gave vacation pay to both wage earners and salaried workers dismissed for cause; almost one half of the companies surveyed had the same policy for those who resigned or were permanently dismissed without prejudice before taking the vacation for which they had already established eligibility.²⁵

In an effort to tighten up loosely-worded eligibility clauses and, apparently, to discourage absenteeism to some extent, some employers have negotiated "time worked" provisions into their labor agreements. These usually require employees to work a stipulated number of hours, days, or weeks during the preceding year in order to be eligible for vacations. Whether or not such an arrangement will be worthwhile will depend in part

²⁵ J. J. Speed, "Paid Vacations and Holidays in 1947," *Management Record*, vol. 9, No. 4, p. 71, National Industrial Conference Board, New York, April, 1947.

upon management's previous experience with its existing vacation plan and in part upon the number of hours, days, or weeks the employee is required to work during the year. A period that is too short will obviously be meaningless and one that is too long will unfairly deprive many workers of their vacations.

PAY FOR HOLIDAYS NOT WORKED

Although they usually get the time off, hourly-paid employees frequently feel that a holiday is actually a penalty since their income for the week is cut proportionately. As a consequence of this, many unions have for years sought pay for holidays not worked. Their tactics have generally been to strive first of all to gain pay for one or two holidays a year. If this can be secured, their subsequent demands are typically extended to six and in some cases as many as a dozen or more holidays.

The spring and summer of 1947 saw a remarkable acceleration of an already noticeable trend in the direction of granting pay for holidays. As the result of the negotiation of clauses calling for six paid holidays by several large firms in the automobile industry a so-called pattern was established which spread rapidly over the country. A survey conducted by the National Industrial Conference Board, and reported in April, 1947, disclosed that fifty-two percent of the 192 companies replying were paying wage earners for holidays not worked. The number of holidays so paid for ranged from one to twelve per year. However, two-thirds of the companies paid for from six to eight holidays annually.²⁶

A private survey of public- and labor-press news articles, covering the period from April, 1947 to August, 1947, disclosed over 100 nationally prominent concerns that had granted from two to eleven paid holidays in current collective bargaining.

Obviously this fringe issue will be pressed for hard by those unions that have not as yet attained paid holidays, and those

²⁶ *Ibid.*, pp. 73-75.

that have broken the ice can be expected to press for an increased number of paid holidays in subsequent bargaining.

NIGHT-SHIFT PREMIUM

Before World War II, night-shift premiums were not commonly encountered in American industry. With the exception of companies having continuous processes, most of industry found it unnecessary to work more than a day shift, and so escaped the problem. Even in the continuous-process industries, such as steel, where three shifts were often a necessity, the shifts were usually rotated and it was considered that the base rate compensated the employee for working nights when his turn came up.

Some idea of the extent of the prewar practices regarding payment of night-shift premiums may be gained from a National Industrial Conference Board survey conducted in 1941. This survey indicated that 18 out of 116 labor agreements (15.5 percent) provided for a night-shift premium ranging in amount from 2 cents to 15 percent.²⁷

As might be expected, the practice was quickly extended during the war years, in part with the encouragement of managements which were desperately trying to build up night shifts, and in part as the result of the activities of the National War Labor Board. In many cases the Board authorized differentials of five cents per hour for the second shift and ten cents per hour for the third shift.

The growth of this practice is somewhat indicated by a survey of 77 labor agreements in the State of Michigan in 1944. Sixty-seven of the 77 contracts (87 percent) contained provisions for a night shift premium.²⁸

²⁷ H. F. Browne, "Trends In Union Agreements," *The Conference Board Management Record*, vol. III, No. 4, p. 42, National Industrial Conference Board, New York, April, 1941.

²⁸ *Labor Contract Clauses*, compiled and edited by Malcolm W. Welty, pp. 328-329, Automotive and Aviation Parts Manufacturers, Detroit, Mich., 1945.

CALL-IN PAY

Call-in pay is actually a guarantee of a certain number of hours of work or an equivalent number of hours' pay if no work is available, unless the employee was previously notified not to report for work on the day in question.

The principal argument of most unions on this issue is that any well-managed plant can schedule its production at least one day in advance. In most instances, this is sound reasoning. However, occasionally circumstances beyond management's control do arise, such as machine breakdowns or failure of scheduled materials to arrive. Here it is obviously unfair to penalize the employer and it is common to find labor agreements specifying that where work cannot be provided because of circumstances beyond the employer's control call-in pay shall not apply.

That management generally recognizes the fairness of call-in pay provisions is attested by the fact that such clauses are quite common in labor agreements. A 1945 survey of 212 agreements, for example, revealed that 150 (71 percent) contained such provisions.²⁹ The extent of the guarantee varies from 1 hour to a full day. The most commonly encountered clause provides for 4 hours' pay, and 2 hours is the next most widely used period of time. Very few contracts in manufacturing industries provide for more than four hours, whereas in the railroad industry it is almost the universal practice to guarantee a full day's pay if any part of a day is worked.

OVERTIME PAYMENTS

One of the oldest of the fringe issues, and perhaps the one most widely in effect, is the payment of overtime after a stipulated number of hours have been worked. The International Typographical Union obtained time-and-a-half payment for

²⁹ A. A. Desser, *Trends in Collective Bargaining and Union Contracts, Studies in Personnel Policy No. 71*, p. 6, National Industrial Conference Board, New York, December, 1945.

overtime as early as the latter part of the nineteenth century, and in 1915 the United Mine Workers of America were demanding overtime at the rate of time and a half for all hours worked over eight per day and double time for work performed on Sundays and holidays. Following the trail blazed by such old and established organizations, the newer unions which came into being in the mid-thirties have also been quick to press their overtime demands.

The early demands for overtime payments were undoubtedly motivated by the desire of the unions to enforce the union scale of hours. Today unions are still interested in achieving a further reduction in hours of work and "rely upon penalty rates to discourage unnecessary overtime and to reward workers for the additional fatigue and inconvenience resulting from long hours."³⁰

Daily overtime payments range from slightly over straight time to triple time but time and a half is by far the most common. In a few instances a graduated scale of overtime is in effect, such as time and a half for the first three hours overtime in any one day and double time thereafter. As a rule overtime is paid for time worked in excess of eight hours in one day.

Unions also usually demand that overtime be paid for time worked in excess of a stipulated number of hours per week, usually forty, although a few unions have negotiated more liberal arrangements. An example is the plan adopted by the United Mine Workers and the bituminous-coal industry which specifies that work in excess of seven hours per day or thirty-five hours per week shall be paid for at the rate of time and one-half.

In addition, unions usually demand overtime rates of pay for all time worked on Saturdays, Sundays, and certain specified holidays.

The payment of overtime for work performed on Saturday, as such, would appear to be unnecessary, particularly if overtime is paid after forty hours have been worked and if the organiza-

³⁰ U. S. Department of Labor, Bureau of Labor Statistics, *Union Agreement Provisions, Bulletin No. 686*, pp. 91-92, Washington, D. C., 1942.

tion is on a schedule of eight hours per day and five days per week. Apparently because of this fact, premium payments for Saturday as such are not too widely encountered.

A much more common practice is the granting of time and one-half or double time for work performed on Sundays or specified holidays. A 1941 survey of 116 labor agreements indicated that over ninety percent of the companies paid overtime for work performed on these days, the practice being about equally divided between time and one-half and double time.³¹ More recently Hill and Hook have observed: "It is . . . fairly standard practice to pay hourly workers at double the ordinary rate for work on Sundays and legal holidays."³²

In principle, overtime payments are *penalties* imposed on management to discourage the assignment of work to employees outside of their regularly scheduled work periods. This objective is often overlooked in the heat of collective bargaining and both parties may readily fall into the error of viewing overtime issues purely as devices for increasing the workers' earnings. Many unions show leanings in this direction and employers who are not alert to the implications of the overtime clauses to which they have agreed may find themselves saddled with penalties far in excess of those they *thought* were being imposed. This is particularly true with respect to (a) the application of overtime provisions to custodial employees and (b) the possibility that overtime rates may be pyramided.

In the case of custodial employees—or, for that matter, any employees who work on necessarily continuous seven-day operations—it is clear that some special measures should be adopted to protect management against excessive penalties. The common practice is to exclude such employees from the regular overtime provisions of the contract. "Many of the agreements

³¹ H. F. Browne, "Trends In Union Agreements," *The Conference Board Management Record*, vol. III, No. 4, p. 42, National Industrial Conference Board, New York, April, 1941.

³² Lee H. Hill and Charles R. Hook, Jr., *Management at the Bargaining Table*, pp. 170-171, McGraw-Hill, New York, 1945; also see: Twentieth Century Fund, *How Collective Bargaining Works*, pp. 208 and 610, New York, 1942.

which provide penalty rates for production workers exempt those who regularly must work on Saturday and Sunday—watchmen, maintenance men, etc. Also agreements covering service trades requiring work on Saturdays and Sundays—such as hotels, restaurants, theaters, and transportation—usually do not provide penalty Sunday rates.”³³

In the case of pyramiding, what may happen is that, through careless phrasing of the applicable clauses, the employer may find himself required to pay both straight-time and overtime rates (or even two sets of overtime rates) for one work period. Thus time and one-half may have to be paid for time worked over eight hours in one day and also over forty hours in one week. If not properly qualified, a clause of this type might require *triple* time for all overtime hours. Again, a poorly phrased clause on pay for holidays *worked* (where straight time is granted for holidays not worked) might also force the employer to pay triple time (double time for work on the holiday plus the straight time granted when the holiday is not worked).

The only feasible method of preventing such occurrences is to examine each overtime clause carefully to determine whether or not it could possibly be misconstrued by an arbitrator. In case of doubt a clarifying section should certainly be added. An illustration of protective phrasing that may be used to prevent payment of triple time in the first example cited above (overtime over eight and over forty hours) is the following:

Time and one half shall be paid for all work in excess of forty hours in the workweek, *less all time for which daily, Saturday, Sunday, or holiday overtime has been earned.*

With the addition of the italicized words, an initially dangerous clause has been made clear and definite. Though not always easy, such additions should be made in every doubtful instance if maximum protection is to be assured.

In addition to contractual provisions covering the payment of overtime, employers must also be constantly alert to the pos-

³³ U. S. Department of Labor, Bureau of Labor Statistics, *Union Agreement Provisions*, Bulletin No. 686, p. 104, Washington, D. C., 1942.

sible effects of certain items of legislation. Thus, those concerns engaged in interstate commerce are bound by the overtime provision of the Fair Labor Standards Act which "requires that overtime compensation at a rate not less than one and one-half times the regular rate of pay be paid to all employees entitled to the benefits of the act for all hours worked in excess of forty hours in any workweek . . ." ³⁴ Also the Walsh-Healey Public Contracts Act provides for the payment of a like bonus for all hours worked above eight per day and forty per week for work done on United States Government contracts which exceed \$10,000 in value. Certain other items of federal legislation contain overtime-payment provisions that affect specific industries such as the building-construction industry under certain circumstances. Of course, even though the employer is not engaged in interstate commerce he may still be required to comply with the terms of analogous state laws.

PORTAL-TO-PORTAL PAY

Unions in industries such as mining have long demanded that employees be paid for time spent in traveling to and from their work places on the company's property. Since the travel times in such cases ranged up to as much as an hour or more in some instances, mining provided a particularly dramatic example of the basic portal-to-portal pay issue. In this industry and in others where (generally to a lesser extent) the problem existed, there was for a long time no avenue open to the unions for its resolution except collective bargaining.

After the passage of the Fair Labor Standards Act, however, it gradually became evident to organized labor that what it could not achieve by collective bargaining might be gained as the result of legal action. Thus, in the Jewell Ridge Coal Corporation case, the United Mine Workers argued that travel time

³⁴ U. S. Department of Labor, Wage and Hour Division, *Collective Bargaining Agreements under section 7 (b) (1) and Section 7 (b) (2) of the Fair Labor Standards Act of 1938, Interpretative Bulletin No. 8*, p. 2, November, 1940.

should be paid for as time worked under the Fair Labor Standards Act. The Supreme Court eventually upheld this contention (May, 1945), pointing out that the miner is "subjected to constant hazards and dangers" in his journey to and from the surface and his place of work. This, it was held, makes the miner unlike "the ordinary workman on his way to work."

It appeared at the time that the worker in the average plant was not affected by the Court's ruling, since the situations were generally not at all comparable. However, in June, 1946, the Supreme Court extended its coal mine interpretation radically, holding that certain types of travel and make-ready activities in manufacturing plants were compensable under the overtime provisions of the law. When returned to a lower court for determination of the precise amounts of money due to employees, the case was finally dismissed on the "de minimis" doctrine that trifling amounts of time might be disregarded. In spite of this fact, many labor unions immediately filed suits against employers for what, as quickly became evident, were fantastic sums.

The United Steelworkers started suit, for example, against the American Steel and Wire Company for 38 million dollars and against the Republic Steel Company for 58 million dollars. It was estimated that the potential liability of some companies would run as high as 100 million dollars or more, enough to wipe out all reserves and working capital in many instances.

In the wake of snowballing demands on the legal front for windfalls which had never been contemplated or negotiated by employers in collective bargaining, Congressional attention was sharply directed toward the obvious inequities of the situation. In spite of determined opposition by organized labor both houses of Congress passed H. R. 2157 (Public Law 49, 80th Congress) and the President approved it on May 14, 1947. Among other things, this law, the Portal-to-Portal Act of 1947, effectively outlawed all portal-to-portal claims (unless based on contract, custom, or practice) not only for the *future* but also for the past. It will probably be years before the full import of the various provisions of the Act will be fully deter-

mined through court action. In the meantime, however, barring Supreme Court rulings that portions of the Act are unconstitutional, it is evident that unions are again at the point where they must achieve portal-pay gains through avenues of collective bargaining rather than legislation. In other words, the issue is again solely a fringe demand which takes its place beside the many others that may be made in negotiations.

GUARANTEED ANNUAL WAGE

High on labor's current list of objectives is the guaranteed annual wage. Indeed, one authority on the subject states: "The annual wage will be a battle cry of labor and a national issue in the coming generation just as the eight-hour day was in the last."³⁵

However, not all unions have joined this crusade. Apparently the United Mine Workers, currently, are not too interested and unions in the needle trades are lukewarm. Generally speaking, the CIO unions in the mass-production industries are keenly and actively pushing this demand, while the AFL unions have not manifested nearly so much interest. However, as one or more unions are able to make real strides in the direction of securing a guaranteed annual wage for their members, most other unions will, of necessity, have to enter the race.

One CIO publication states: "A wage-earner must have steady work and pay this week, next week, and all the year around, if he is to have security. Only an annual wage is an adequate wage."³⁶ Converting this philosophy to specific demands, the United Steelworkers of America have asked for:

"Pay for at least forty hours each week. Pay for fifty weeks each year, plus vacations. This is to cover all regular workers who have worked a three-months' trial period or more."³⁷

³⁵ Joseph L. Snider, "Management's Approach to the Annual Wage," *Harvard Business Review*, vol. XXIV, No. 3, p. 326, Spring Number, 1946.

³⁶ Congress of Industrial Organizations, Department of Research and Education, *Guaranteed Wages the Year Around*, Publication No. 124, p. 1, Washington, D. C., 1945.

³⁷ *Ibid.*, p. 4.

Like most of the other fringe issues, guaranteed annual wages were granted by some managements long before the unions began to ask for them. One plan was developed by the Wallpaper Association of America in the 1890's, but was abandoned in 1930 as the result of the depression. Another plan was placed in effect in 1910 but subsequently discontinued. In 1917 the Columbia Conserve Company placed an annual-wage plan in operation. This plan was later dropped when the company went out of business. One of the earliest plans and one of the most successful of all is the guaranteed annual work plan of the Procter and Gamble Co. This plan is still in existence.

However, the mortality rate of the relatively few guaranteed-wage (or guaranteed-work) plans that have been placed in effect has been high. A National Industrial Conference Board survey of sixty-one such plans indicates that over half have been discontinued.³⁸ Some idea of the extent of various types of guarantees³⁹ of wages or work may be gained from the authoritative Latimer Report.⁴⁰

In this study, any plan guaranteeing work or wages for three or more months was included. On the basis of this criterion, 196 plans were found to be currently in existence and 151 others to have been discontinued (96 of the latter operated under the Wisconsin unemployment-compensation law in 1934-35). Approximately 61,000 employees were covered by the active plans. Of the 172 firms for which total employment data were available, 54.1 percent employed less than 50 workers and almost two-thirds (64.5 percent) employed less than 100. Only 10.5 percent of the plans applied to 1000 or more employees.⁴¹ With some 14.8 million workers covered by collective-bargaining

³⁸ F. B. Brower, "Guaranteed Wage Plans in Practice," *The Conference Board Management Record*, vol. 8, No. 4, p. 103, National Industrial Conference Board, New York, April, 1946.

³⁹ Many of the plans cover only a portion of the working force, in some cases only a small proportion of the total employees. Also, a large proportion of the plans guarantee periods of less than a full year.

⁴⁰ Murray W. Latimer (Research Director), *Guaranteed Wages*, U. S. Government Printing Office, Washington, D. C., January, 1947.

⁴¹ *Ibid.*, p. 297; all percentages computed from data in Table 6.

agreements at the end of 1946, it is obvious that the 61,000 under some form of guaranteed-wage or -work plan amounted to a small part of 1 percent. Such plans have a long way to go before they can assume stature as a significant feature of modern labor relations.

Basically management is sympathetic to labor's desire for a guaranteed annual wage.

"As one official expressed it: 'Industry has no moral or social right to look upon labor as a commodity. No man can be expected to give his greatest skill or best loyalty to a job that discards him when trouble starts.' Another executive expressed similar sentiments in saying that: 'Management owes a responsibility to employees for a more certain income. It should give the same sense of security as they themselves want.'" ⁴²

However, it cannot be denied that the installation of such plans is fraught with many dangers. The great majority of plans currently in effect have been installed since 1932. During the last fifteen years the country has been in an expanding economy, first picking up from the depression low and later entering a war boom. This period has, of course, been highly favorable for the initiation and maintenance of such plans. However, even so, "several concerns state that during the minor recession of 1937 and 1938, payments to make good the company's promise of steady employment were heavy and necessitated revisions in the provisions of their plans." ⁴³ Two-thirds of the plans originated during the decade 1930-1940 were also abandoned during this same period.

The three most successful guaranteed annual-wage (or work) plans were placed in effect only after careful cost and market analyses had been made. In the case of the Procter and Gamble Co. the concern's entire method of distributing its product was changed to permit a smoothing out of the sales curve. The Hormel Co., after analysis, added several new product lines to

⁴² F. B. Brower, "Guaranteed-Wage Plans in Practice," *The Conference Board Management Record*, vol. 8, No. 4, p. 101. National Industrial Conference Board, New York, April, 1946.

balance the sales curve, and the Nunn-Bush Shoe Company achieved somewhat the same result through manufacturing in part for inventory for its varied and integrated lines of shoes. In all of these concerns their guaranteed-wage (or work) plans were placed in effect only after careful analysis and some revision of manufacturing and/or merchandizing procedures. However, other industries present more difficult problems. For example, the steel industry, which has been and probably will be hard pressed on this issue, cannot manufacture for inventory and is beset with widely fluctuating sales and production cycles.

Obviously such plans can succeed only after the sales curve has been somewhat smoothed out by changing the buying habits of industry, by adding supplemental lines of products, or, where it is possible, by manufacturing for inventory. This requires analysis and planning (to say nothing of capital) and cannot be worked out overnight.

Yet organized labor is impatient. Some labor spokesmen feel that industry should commit itself to the annual wage and then figure out some way to come through on its promise. Thus, Barkin says: "The annual wage is an immediate minimum charge upon an employer or group of employers which must be shouldered while they evolve full plans for continuous annual employment. Such employment may be with one employer or with a group of employers. The purpose of the charge is to press management singly or in groups to dovetail operations so as to assure full continuity of employment. While management and the community are developing programs and shaping techniques, labor is asking that both shall share the cost of their failures. Workers have shouldered risks which are not properly theirs. The risk-takers are the property owners. They should, in our society, bear these particular costs. They cannot justly escape these costs as they have done. The social cost of business must become a substantial part of the accounting of enterprise."⁴⁴

⁴⁴ Solomon Barkin, "The Challenge of Annual Wages," *Personnel Journal*, vol. 24, No. 10, pp. 370-371, April, 1946.

Attractive though such impatient expressions as the above may be to unionists, there is little to commend them to employers. The practical problems and difficulties that need resolution before the necessary guarantees can be made still exist and their severity is not altered by union pressure. In fact, even though a given company has been successful in leveling off its sales curve, it is still faced with the hazard of an appreciably lower volume of sales in periods of depression. It may be argued that the guarantee is only for a year, but it is quite obvious that, once agreed to, such a plan could not be discontinued without serious trouble with the union and adverse effects on employee morale.

To overcome this problem most of the plans that are in effect cover only a select group or a small proportion of the employees in the concern. However, in many companies, a certain proportion of employees already have most of the benefits of such a guarantee. For example, executives or technicians working under an employment contract enjoy comparable benefits. Likewise, in unionized concerns having straight seniority clauses governing reductions in force, the senior employees usually have comparable benefits.

Here, then, is the paradox of the guaranteed annual wage. "The guaranteed annual wage is not required during periods of great prosperity. It is not needed in firms with stable or expanding demand, or for long-service employees. But it is most likely to succeed under such circumstances. The guaranteed annual wage is desirable during periods of depression, in firms with declining demand, or for non-permanent employees. But these are precisely the circumstances when it is least operative. Thus the tragedy of the annual guaranteed wage is that when it is least needed, it can be best applied; and when it is most needed, it can be least applied."⁴⁵

⁴⁵ Ernest Dale, *The Guaranteed Annual Wage*, *American Management Association Personnel Series No. 3*, vol. 21, p. 150, New York, November, 1944.

SEVERANCE PAY

The concepts underlying demands for severance pay are closely related to those involved in the case of the guaranteed annual wage. Both are devices to assure employees some measure of economic security, the prime difference being that, in the case of severance pay, the period of security is typically much shorter in duration.

The basic intent of severance pay is to provide the employee who is forced to leave the concern through no fault of his own with sufficient money to tide him over until he can find other employment. Many companies have voluntarily provided such plans for their salaried employees and some also have similar arrangements for hourly workers. A recent survey of office-wage policies in 279 concerns by the National Office Management Association, discloses that over a third of the non-unionized firms have voluntarily provided such plans.⁴⁶ In addition such concerns as the Freeport Sulphur Company, Sylvania Electric Products, Inc., the Monsanto Chemical Company, and the Denison Manufacturing Company have extended the coverage of their plans to include hourly-paid employees.

Prior to World War II, only a few unions such as the American Newspaper Guild and the Railroad Brotherhoods were actively interested in securing severance-pay provisions in their contracts. In most cases the interest of these unions resulted primarily from local conditions in the industry. During the war the National War Labor Board ordered the institution of comparable plans in several cases. Occasionally, too, a severance pay plan has been ordered by an arbitrator, as happened in the case of Gimbel Bros., Inc.

However, such plans are still far from common in labor agreements. A comprehensive survey conducted by the Bureau of Labor Statistics of the United States Department of Labor in

⁴⁶ American Management Association, *Management Review*, vol. 35, No. 4, p. 114, New York, April, 1946.

1944, disclosed only 450 agreements out of 9500 analyzed (4.7 percent) which provided such plans.⁴⁷ It is evident that the great majority of managements have not been convinced that there is need to supplement the efforts of government which already provides severance pay in the form of unemployment compensation insurance.

Of the 450 agreements just mentioned, about 160 had been secured by the American Newspaper Guild and 169 by the International Typographical Union in the newspaper and commercial-printing industries. Seventy-three were negotiated by the United Office and Professional Workers of America covering workers in offices, insurance companies, banks, and social-service agencies, and the remaining ten percent were scattered widely among the balance of industry.

Typically severance pay is based on the employee's length of service and existing rate of pay. However, the agreements of the International Typographical Union do not consider seniority and the payment is the same for all employees affected, regardless of length of service, amounting, in general, to two weeks. The agreements of the United Office and Professional Workers of America most frequently specify one week's pay for every year of service. The most generous provisions of all are found in the American Newspaper Guild's agreements. The maximum allowance (based on earnings and length of service) in these contracts ranges from four to fifty-two weeks' pay, with over half calling for from twenty-six to thirty weeks.

Excluding the Guild's agreements the majority of the contracts provide severance pay only in instances where the employee loses his job as the result of business mergers, technological changes, or general lay-offs caused by lack of work. In contrast, the Guild has succeeded in making severance pay a basic equity of the employees. Thus it is usually paid regardless of the reason for severance—*"whether for incompetence or other*

⁴⁷ U. S. Department of Labor, Bureau of Labor Statistics, "Dismissal-Pay Provisions in Union Agreements," *Monthly Labor Review*, vol. 60, No. 1, p. 50, January, 1945.

personal cause, or for economic reasons, by resignation, retirement, or death."⁴⁸

PAID SICKLEAVE

The average wage-earner, having accumulated practically no savings, is perpetually haunted by the fear of extended illness. As a result, workers have long sought for financial protection against this contingency. Partly to meet this need, some of the older unions, such as the railroad brotherhoods, originally came into existence as fraternal welfare societies before they became collective-bargaining agencies.⁴⁹ Sickness benefits were introduced by the Bakers' Union in 1893, by the Tobacco Workers in 1896, by the Pattern Makers in 1898, and by the Plumbers in 1903.

Practically from the start, the unions encountered difficulties in the administration of their plans. The following comments indicate the nature of some of their troubles: "Considered actuarially, union sickness-benefit plans have been unsound in almost every possible respect." "Other often-discussed problems have been the abuse of the funds by local officers and members, the inadequacy of size and duration of benefits, and administrative arrangements."⁵⁰ As a result of these problems, by 1943 only six unions were known to be continuing their sickness-benefit plans.

In spite of its difficulties in trying to provide members with some form of paid sickleave, organized labor seldom introduced such demands into collective bargaining prior to World War II. For the most part, both unions and employees seemed to prefer to take their economic gains in the form of higher wages and shorter hours. However, when this was made more difficult by

⁴⁸ *Ibid.*, p. 48 (italics added).

⁴⁹ Helen Baker and Dorothy Dahl, *Group Health-Insurance and Sickness-Benefit Plans in Collective Bargaining*, p. 11, Princeton University, Industrial Relations Section, Princeton, N. J., 1945.

⁵⁰ *Ibid.*, p. 13.

the advent of the war-time wage-stabilization program, paid sickleave became another of the many fringe issues for which the unions began to strive.

The extent to which the drive for paid-sickleave provisions was successful is indicated by a 1945 survey conducted by the Bureau of Labor Statistics of the U. S. Department of Labor. The results clearly reveal that, even under war-time conditions, the unions did not make much headway in most industries. Out of 5000 contracts surveyed, only 350 (7 percent) provided for paid sickleave. Furthermore, three-quarters of these were in non-manufacturing industries.⁵¹ "Only in public utilities, and among radio technicians, and newspaper office and editorial workers are paid-sickleave provisions in agreements the rule rather than the exception."⁵²

In the survey, the maximum period for which payment was provided ranged from three days up to fifty-two weeks per year (for employees with twenty-six years of service). However, by far the most typical plan was that allowing five days or a week's leave after one year of service. In addition, the majority of the plans provided for full pay during the leave although an appreciable number called for only half-pay.

For the most part, management is strongly opposed to agreeing to a paid-sickleave plan in labor agreements. This appears to be particularly true in the manufacturing industries. The typical reaction is that paid sickleave is of real value only in cases of prolonged illness, which is precisely where the modest one or two weeks the average employer could afford would be of little benefit. The principal effect, it is maintained, would be to increase absenteeism at the employer's expense. In a brief prepared on this subject one corporation states, in part: "It seems well established by industrial experience that if there is no financial loss to the individual from sickness, a very substan-

⁵¹ U. S. Department of Labor, Bureau of Labor Statistics, "Sick Leave Provisions in Union Agreements," *Monthly Labor Review*, vol. 60, No. 5, p. 1023, May, 1945.

⁵² *Ibid.*, p. 1024.

tial proportion of any group of factory workers will be tempted to malingering, or at least to exaggerate their indispositions, with a resulting sharp increase in absenteeism.”⁵³

The inability of labor unions to provide secure and reasonable sick benefits to their members, plus the reluctance of most managements to agree to such clauses in labor agreements has led to some recent legislative attempts to cope with this problem.

In 1942 Rhode Island passed a law providing compulsory cash sickness benefits for workers. This was followed by similar legislation in California in 1946, and no doubt comparable bills will be introduced in other state legislatures in the near future.

After four years' experience, Rhode Island amended its law in 1946, taking the 1.5 percent which employees with incomes up to \$3000 a year formerly paid into the unemployment-compensation fund and diverting the money to the sickness-benefit fund. Under the law no employer contributions are required. Benefits under the act amount to a minimum of \$6.75 weekly and a maximum of \$18.00. The amount and duration of the payments in the event of sickness depend upon the individual's previous earnings, the maximum duration being twenty-one weeks except in the case of normal pregnancies where the limit is fifteen weeks. Under the amended law an individual is considered sick if he is unable to perform his "regular or customary work" because of his physical or mental condition. In addition he is eligible for benefits even though his employer pays him all or a part of his regular wage. In order to discourage malingerers, there is also a one-week waiting period for the first disability, but none for subsequent disabilities.

The California law is essentially the same as that passed by Rhode Island. Benefits range from \$10 to \$20 a week for a period of from nine to twenty-three weeks, depending upon previous earnings. A one-week waiting period is required for each period of disability. Benefits are not given for pregnancy. As in the

⁵³ *The Effect of Full-Pay Sickleave, American Management Association Personnel Series No. 2, vol. 21, p. 110, New York, September, 1944.*

case of Rhode Island, the plan is financed by diverting employee contributions from the unemployment compensation fund.⁵⁴

HEALTH AND WELFARE PLANS

While many unions strive to secure paid-sickleave clauses in labor agreements, other unions now feel that this is not enough, and consequently are seeking health and welfare plans that are broader in coverage. Typical of the aims of these more aggressive unions is the program of the United Electrical, Radio and Machine Workers of America whose General Executive Board has recommended that the union negotiate welfare plans which will include accident and sickness benefits, life insurance, accidental-death and -dismemberment benefits, surgical benefits, and hospital benefits for workers and their families.

Perhaps the earliest method of providing some measure of financial assistance for sick or injured employees in need was the time-honored device of passing the hat among other employees. Since this usually proved inadequate, in time "the workers banded together in mutual-benefit associations designed to provide payments to members off work because of sickness or injury, or to their dependents in the event of death."⁵⁵ As time went on, some of these mutual-benefit associations were administered and financed jointly by the employees and the company. As an example, such plans were adopted by the Westinghouse Corporation in 1907 and the International Harvester Company in 1908. Both plans are still functioning. Also, many other companies have sponsored group-insurance programs which provide comparable benefits. Typically such plans are administered by management with the company paying a portion of the premium.

⁵⁴ The material for the foregoing discussion on the Rhode Island and California laws was taken from: "State Cash Disability Benefits," *The Conference Board Management Record*, vol. 8, No. 10, pp. 319-320, National Industrial Conference Board, New York, October, 1946.

⁵⁵ W. L. Kettering, *Benefit Programs in Collective Bargaining*, *American Management Association Personnel Series No. 5*, vol. 22, p. 336, New York, March, 1946.

Negotiated welfare plans were practically unknown a few years ago. However, as in the case of so many of the fringe issues, the unions began, in the early war years, to seek welfare plans in lieu of the wage increases that could not be attained under the wage-stabilization program. This is borne out by the fact that during the war "one union reported that in its negotiations it asked for a wage increase or group insurance when it was unlikely that an additional wage increase would be allowed by the War Labor Board. *As a result it frequently gained the insurance.*"⁵⁶ Likewise, commenting in 1944 on a labor agreement just signed by his company, one executive stated: "We have just concluded the bargaining for a new contract which includes a so-called social-insurance clause . . . *the benefits are provided in lieu of wage increases.*"⁵⁷

The spread of such benefit plans during the war was also fostered by the policies of the National War Labor Board. Although the Board would not order such plans in disputed cases it nevertheless did approve plans that were voluntarily arrived at between the parties if the cost did not exceed five percent of the payroll. In some cases, too, the Board ordered the employer to include an already-existing unilaterally-established benefit program in the labor agreement. Likewise benefit programs have been established in some cases as the result of arbitrators' awards.

"The recent arbitration award in the American Hide and Leather Company case grants the request of the International Fur and Leather Workers' Union (CIO) for group-insurance benefit (sickness and hospitalization), without contribution on the part of the employees. The arbitrator's decision, requiring the company to expand its group life insurance to provide these additional benefits, was based on the fact that this is the prevail-

⁵⁶ Helen Baker and Dorothy Dahl, *Group Health-Insurance and Sickness-Benefit Plans in Collective Bargaining*, pp. 18 and 19, Princeton University, Industrial Relations Section, Princeton, N. J., 1945. (Italics added.)

⁵⁷ *The New Pattern of Labor Relations, American Management Association Personnel Series No. 79*, pp. 30 and 31, New York, 1944. (Italics added.)

ing practice in the tanning industry, particularly in Massachusetts, where more than half of the workers are covered by health-benefit plans paid for by the company and an additional number by plans paid for by joint employee-employer contributions."⁵⁸

An idea of the way in which benefit and welfare plans spread after the war is conveyed by the fact that between 1945 and early 1947 the number of workers covered by negotiated plans increased from 600,000 to 1,250,000.⁵⁹ Most of the original and later gains were achieved by the same unions with a few exceptions, notably the United Mine Workers.⁶⁰ It is interesting to note, however, that only three industries are extensively covered by negotiated plans. These are mining, textiles, and clothing. The remaining plans are widely scattered.

The typical negotiated welfare plan provides coverage for those employees who are covered by the labor agreement and are union members. In addition, a high proportion of the existing agreements stipulate that the union members must be in good standing. The benefits provided under the typical plan include sickness and accident payments of approximately \$15 weekly for a maximum of thirteen weeks per disability. Surgical benefits of from \$5 to \$150 are included. Likewise, about \$4 per day is allowed for cases requiring hospitalization. These payments are limited to an average of thirty days per year. The plan

⁵⁸ U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, vol. 62, No. 6, p. 868, June, 1946.

⁵⁹ U. S. Department of Labor, Bureau of Labor Statistics, "Union Health and Welfare Plans," *Monthly Labor Review*, vol. 64, No. 2, p. 191, February, 1947.

⁶⁰ *Ibid.*, p. 191. The majority of benefit and welfare plans have been negotiated by the following unions: International Ladies' Garment Workers (AFL); Amalgamated Clothing Workers (CIO); United Hatters, Cap and Millinery Workers (AFL); Textile Workers (CIO); United Textile Workers (AFL); International Fur and Leather Workers (CIO); United Electrical, Radio and Machine Workers (CIO); Upholsterers International Union (AFL); United Furniture Workers (CIO); Marine and Shipbuilding Workers (CIO); Hotel and Restaurant Employees and Bartenders International League (AFL); United Paperworkers (CIO); United Retail, Wholesale, and Department Store Employees (CIO); Street, Electric Railway, and Motor Coach Employees (AFL).

also includes \$1000 of life insurance and \$500 of accidental-death and -dismemberment insurance.⁶¹

Most of the plans are financed entirely by the employer. Although the United Mine Workers' plan is financed by a payment of twenty cents a ton on all coal mined by the operators, the balance of the plans are, for the most part, financed by the employer's contribution of a percentage of his payroll. The range is from one to five percent in different agreements, and two or three percent is the most common figure.

Until recently approximately one-third of the employees covered by these programs were under plans administered jointly by the employer and the union. Somewhat less than a third were under plans administered solely by the union, and the balance were covered by plans administered primarily by insurance companies. Now the Labor-Management Relations Act provides that the employees and the employer must be equally represented in the administration of the fund with neutral persons available to settle disputes.⁶²

CONCLUSION

Labor's desire to achieve the security and higher income represented by the various fringe issues discussed on the preceding pages is understandable. But these demands are expensive. For example, it is estimated that the employee-benefits program of the Standard Oil Company of New Jersey, which includes death, accident, and sickness benefits as well as an annuity and savings plan, costs the company an amount equivalent to almost fifteen percent of its total payroll. The Vice President and Comptroller of the International Harvester Company estimates

⁶¹ This typical plan was developed from an analysis of the plans negotiated by fourteen unions and union locals. The analysis is too bulky to reproduce here and is contained in: Helen Baker and Dorothy Dahl, *Group Health-Insurance and Sickness-Benefit Plans in Collective Bargaining* (Appendix), Princeton University, Industrial Relations Section, Princeton, N. J., 1945.

⁶² See: Section 302, Labor-Management Relations Act for the specific requirements of the law regarding the negotiation of such trust funds.

"that an adequate program of employee security will cost employers generally between eight and fifteen percent of payroll, *even with employees contributing substantial amounts.*"⁶³ Also the Westinghouse Electric Corporation estimated that a program presented to it by the UE-CIO would cost fourteen percent of the payroll if put in effect. These estimates are substantiated by the Social Security Administration. Utilizing its actuarial experience, the SSA figures that a medical-care program will cost from four to six percent, old-age-survivors' insurance from three to eight percent and sickness benefits from one to two percent of the payroll.

In addition to the cost of health, welfare, and insurance programs, as cited above, the average vacation plan will cost from two to four percent of the payroll and six paid holidays would add another two to three percent.

Obviously fringe issues could easily cost a company an amount equivalent to twenty percent or more of the payroll. In view of these facts management should negotiate such clauses only after realistic cost analyses have been made, and the same type of surveys and reviews conducted as are necessary in the case of direct wage demands.

HOURS OF EMPLOYMENT

It is a historical fact that, until fairly recently, food, clothing, and shelter were so scarce and so difficult to produce by handicraft methods that the majority of persons had to work during almost all of their waking hours merely to provide the essentials of life. Commenting on this, one writer notes that: "In the earlier days of economic scarcity, men's hours were said to be from sunrise to sunset but those were only the hours when men worked out-of-doors; after darkness had fallen many men still had chores to do, and in the evening, by the light of the hearth, there were handiworks such as harness-making or shoemaking

⁶³ C. E. Jarchow, *Cost Aspects of Employee-Security Plans*, American Management Association Personnel Series No. 6, vol. 22, p. 420, New York, May, 1946. (Italics added.)

and repairing, nail slitting, and cabinet work. The hours of toil might be more than sixteen per day.”⁶⁴

As the factory system developed in the early nineteenth century, the same long working hours tended to prevail. The following schedule, posted on the wall of the Amasa Whitney factory at Winchendon, Massachusetts, is typical:

The mill will be put into operation ten minutes before sunrise at all seasons of the year. The gate will be shut ten minutes after sunset from March 20 to September 20; at 6:30 P.M. from September 20 to March 20.

It will be required that every person employed be in the room of employment at the time mentioned above.

The hands will take breakfast from November 1 until March 1 before going to work; they will take supper from May 1 until August 31 at 5:30 P.M.; from September 20 until March 20 between sundown and dark. Twenty-five minutes will be allowed for breakfast, 30 minutes for dinner, and 25 minutes for supper, and no more.

(Signed) Amasa Whitney,
Winchendon, Massachusetts, July 5, 1830.⁶⁵

However, labor had already started to rebel. As far back as 1791 the carpenters of Philadelphia “adopted a resolution declaring that a day’s work should be deemed to commence at six o’clock in the morning and end at six o’clock in the evening.”⁶⁶ In 1822 a group of journeymen, millwrights, and machinists “passed resolutions that ten hours of labor were enough for one day, and that work ought to begin at 6 a.m. and end at 6 p.m., with an hour for breakfast and one for dinner.”⁶⁷

Although most of these early efforts to reduce hours were unsuccessful, some progress was made. By 1835, building-

⁶⁴ Malcolm Keir, *Labor Problems from Both Sides*, p. 81, Ronald Press, New York, 1938.

⁶⁵ Joseph A. Vaughan, “Industrial Evils of the Past,” *A Look at Labor*, p. 3, Excursion Books, 41 Eighth Street, St. Paul, Minn., 1946.

⁶⁶ H. A. Millis and R. E. Montgomery, *Labor’s Progress and Some Basic Labor Problems*, p. 465, McGraw-Hill, New York, 1938.

⁶⁷ John R. Commons and Associates, *History of Labor in the United States*, vol. 1, p. 170, Macmillan, New York, 1918.

trades' workers had won the ten-hour day in many of the larger eastern cities, and in this same year the hatters struck and also won the ten-hour day. However, the ten-hour day and the six-day week were not generally secured by labor until about 1890. Even then, in sawmills, iron and steel plants, in bakeries, and in cotton goods manufacturing, working days of from eleven to thirteen hours were common.

In the three decades between 1890 and 1920 labor fought for and largely attained the eight-hour day and the six-day week. "As early as 1860, agitation for an eight-hour day started. Dreamers such as Iva Steward in Massachusetts fostered Eight-Hour Leagues which kept active the propaganda for an eight-hour day, but without much actual accomplishment. The Knights of Labor took up the movement and met with partial success in some skilled crafts."⁶⁸ In 1890 the carpenters' union won the eight-hour day for 50,000 men of their craft in 137 towns and cities.

"Beginning in 1914 and 1915, however, the eight-hour movement seemed literally to sweep the country. . . . Prior to the entry of this country into the war, the anthracite coal miners had obtained a straight and the railroad employees a basic eight-hour day; and during the war such important industries, among others, as slaughtering and meat packing, boot and shoe manufacture, newsprint paper, the lumber industry in the Northwest, and the garment trades adopted the eight-hour standard."⁶⁹

Once the eight-hour day and the six-day week had been largely secured, organized labor quickly sought an even shorter workweek. Among the first to make further gains were the well-organized building trades, where, since 1920, the eight-hour day and the five-day week have been included in virtually all important trade agreements. However, by way of contrast, the then largely unorganized iron and steel industry did not abolish the twelve-hour day until 1923-24. During the balance

⁶⁸ Malcolm Keir, *Labor Problems from Both Sides*, p. 82, Ronald Press, New York, 1938.

⁶⁹ Millis and Montgomery, *op. cit.*, p. 469.

of the 1920's the five-day week became more widely accepted. In the early 1930's, primarily as the result of the depression, the workweek, and even the workday, were in many cases drastically reduced, largely in an effort to share the work. In the building trades, since 1935, the seven-hour day has prevailed in many communities, and the six-hour day in some trades in New York City and the Far West. In 1934, the United Mine Workers secured the seven-hour day and the thirty-five-hour week in the bituminous coal mines, and a similar work schedule was won in the anthracite coal-mining industry in 1936. Also, in 1936, the rubber workers, as the result of strike action, were able to retain the thirty-six-hour week in most of Akron's rubber plants.

However, the great bulk of industry and much of commerce is currently working a five-day, forty-hour week. A recent analysis indicates that the overwhelming majority (93 percent) of current labor agreements surveyed which specify the length of the regular working day and week call for an eight-hour day and a forty-hour workweek.⁷⁰

At the present time, and indeed for the past fifteen years, many segments of organized labor are seeking the thirty-hour week. This has been a paramount objective of the American Federation of Labor since 1932. Likewise, the preamble of the constitution of the American Federation of Hosiery Workers (CIO) contains a pledge that the union will secure the six-hour day and the five-day week. At a recent convention of this union "the National Executive Board was instructed 'to exercise extreme vigilance in watching for the earliest possible moment' in which to incorporate the thirty-hour week in future agreements."⁷¹ Also the building trades' unions and the United Mine Workers have, in the recent past, aggressively sought the thirty-hour week.

⁷⁰ A. A. Desser, *Trends in Collective Bargaining and Union Contracts, Studies in Personnel Policy No. 71*, p. 7, National Industrial Conference Board, New York, 1945.

⁷¹ U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, vol. 59, No. 6, p. 1191, Washington, D. C., 1944.

Nor has organized labor overlooked the possibility of legislative action. During the depression years of the early 1930's the railroad unions twice tried to get Congress to require that the railroads observe a thirty-hour week, and the Thirty Hour Week Bill introduced by Senator Black received most of its support from organized labor. This bill passed the Senate but was defeated in the House.

However, even though little has recently been heard of the thirty-hour week because of the effects of the war, it is almost certain that organized labor will again push this demand in the future.

LEGISLATION AFFECTING HOURS OF EMPLOYMENT

For the most part, labor in the European industrial countries attained a shorter workweek before comparable standards were secured by the American worker. However, these reductions were primarily attained as the result of legislative action in the European countries and only secondarily through collective bargaining. In this country the opposite has generally prevailed.

Nevertheless there have been many governmental attempts in this country to reduce hours of work. "In 1840 President Van Buren, by executive order, commanded that workers in navy yards be limited to no more than ten hours of work per day and that their pay for this shorter day was to equal what they had gotten for a longer day's work."⁷² Since then the federal government has passed eight-hour laws for its own employees and many state governments have followed suit.

However, laws governing the hours of employment of non-governmental employees were long frowned on by the courts, since it was felt that such laws would invade the right of contract of the employee and the employer. Eventually, this concept was modified by a basic recognition on the part of the courts that the police power of the state permitted it to pass legislation in order to protect the health, safety, and well-being

⁷² Malcolm Keir, *op. cit.*, p. 81.

of the citizens. Thus, a Utah statute, passed in 1896, limiting the daily hours of labor in mines to eight hours was found to be constitutional by the Supreme Court.⁷³ At the present time the majority of states have limited the hours of adult males in one or more branches of private employment, and state statutes limiting and affecting the working hours of females and children are very common.

Under the National Industrial Recovery Act of 1933 the federal government again took a hand in the regulation of hours. Eighty-five and five-tenths percent of the NIRA codes specified the forty-hour week as basic or standard. Even though the NIRA was declared unconstitutional three years later, many employers had by that time become accustomed to working under the forty-hour week and the hours provisions of the codes had been already negotiated in many labor agreements. The practice of working an eight-hour day and a forty-hour week was also further cemented by the passage of the Walsh-Healey Public Contracts Act in 1936 and the Fair Labor Standards Act in 1938. Although these laws do not set a limit on the number of hours that may be worked per day or per week, their overtime provisions nonetheless induce cost-conscious managements to schedule an eight-hour day and a forty-hour workweek whenever possible.

MANAGEMENT'S REACTION TO THE PROBLEM OF HOURS OF EMPLOYMENT

As labor has pressed for a shorter working day and week, managements' reactions have been mixed. Some employers have voluntarily reduced hours. One outstanding example is Henry Ford, who as early as 1926 placed all his employees on an eight-hour day and a five-day week. Other industrialists, on the contrary, stoutly resisted this trend. As an example, the late D. H. Gary, when chairman of the board of directors of the United States Steel Corporation during the 1920's, consistently opposed

⁷³ Holden v. Hardy, 169 U. S. 366.

a shorter work day and week, feeling that it was uneconomical and impractical. However, the reduced schedules have now arrived and, as technological advances increase output per man-hour in the future, the thirty-hour week may well become the general industrial practice.

The trend toward shorter hours poses two fundamental problems to which management must give serious consideration. One is the tendency for take-home pay to be maintained when hours are reduced. It will be recalled that in 1840, President Van Buren, when reducing the hours of navy yard workers, ordered "that their pay for this shorter day was to equal what they had gotten for a longer day's work."⁷⁴ Under collective bargaining it is inevitable that a union's request for a reduction in hours will be accompanied or shortly thereafter followed by a demand for an increase in hourly rates. This has been the history in many industries such as coal, glass, and electrical products. Consequently, before agreeing to a reduction in hours below eight per day or forty per week, management should consider well the economics involved.

The other fundamental problem is the scheduling of the shortened hours. The number of hours to be worked in a work-day and workweek, the number of shifts to be worked and the starting and stopping times are very important managerial considerations and should be determined unilaterally by management. This is basic and fundamental if management is to manage and is typically so found in practice. One survey indicated that in the great majority of plants contacted management did retain this prerogative.⁷⁵ However, a wise employer keeps the prerogative by not abusing it and by conforming as much as possible to the accepted practice in the industry and the community in scheduling hours.

⁷⁴ Malcolm Keir, *op. cit.*, p. 81.

⁷⁵ American Management Association, *The Management Review*, vol. 33, No. 12, p. 448, New York, December, 1944.

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